domestic
abuse
commissioner

FULL REPORT

Everyday business

Addressing domestic abuse and continuing harm through a family court review and reporting mechanism

Professor Mandy Burton and Professor Rosemary Hunter KC (Hon)
Loughborough University

October 2025

Acknowledgements

We are grateful to all the research participants who generously shared their time and experiences: the victims/survivors, their support workers, the judiciary, court staff and Cafcass/Cafcass Cymru Family Court Advisors. Thanks also to those who helped to guide the project and facilitate access.

The pilot was carried out in partnership with a team of senior researchers in the Office of the Domestic Abuse Commissioner, and we are grateful to the Commissioner and her team for their dedication and hard work

Contents

1 Introduction

In 2020, the Ministry of Justice (MoJ) published a report, *Assessing Risk of Harm to Children and Parents in Private Law Children Cases*, which has come to be known as the 'Harm Panel' report.[1] The Harm Panel examined how effectively the family courts identify and respond to allegations of domestic abuse in private law child arrangements cases under section 8 of the Children Act 1989. The Harm Panel's findings were based on a public call for evidence, which resulted in over 1,200 responses from individuals and organisations across England and Wales. In addition, the panel commissioned a literature review,[2] and held roundtables and focus groups with professionals, parents and children with experience of the family courts.

The research reviewed for the panel showed that the family courts have long struggled to recognise domestic abuse (in all its forms, including post-separation abuse) and to respond appropriately to allegations of domestic abuse when deciding contact arrangements.[3] There have been attempts to set out guidance in case law,[4] and practice directions; the main guidance being Practice Direction 12J of the Family Procedure Rules.[5] However, the panel concluded that there are four structural barriers that operate together to impede responsive processes and safe outcomes in child arrangements proceedings in the family courts; a pro-contact culture, adversarialism, resource constraints and silo working.

The panel made recommendations in relation to both the processes and the outcomes for parties and children involved in child arrangements proceedings, and those recommendations were accepted in full by the Government.[6] As a result of the Harm Panel's recommendations, work began on piloting a different approach to the standard Child Arrangements Programme (CAP),[7] and the courts involved in this work have become known as 'Pathfinder' courts.[8] In addition, the Domestic Abuse Act 2021 now recognises children as direct victims of domestic abuse if they 'see, hear or experience the effects' of abuse.[9] The adversarial process was modified by the introduction of a Qualified Legal Representative (QLR) scheme, which prevents direct cross examination of victims of abuse by abusers, or any requirement for a victim of abuse to directly cross-examine their abuser.[10] The Family Procedure Rules were amended to provide that victims of domestic abuse are automatically considered to be 'vulnerable witnesses', requiring the court to consider what special measures may need to be provided to enable them to participate fully in proceedings and give their best evidence.[11] Cafcass and Cafcass Cymru reviewed their processes for working with parents and children in child arrangements cases and have introduced new training and practice guidance on domestic abuse for Family Court Advisers (FCAs).[12]

Other developments since the Harm Panel reported include fresh guidance in case law, in particular, *Re H-N and Others*[13] and *K v K*.[14] The Court of Appeal reiterated that fact-finding hearings (FFHs) on contested allegations of domestic abuse should only be held when 'necessary and proportionate'. However, the court noted the importance of a modern understanding of domestic abuse that acknowledges the risk of harm that coercive and controlling behaviour poses to children and adult survivors post separation. The court emphasised the need to look for patterns of coercive and controlling behaviour rather than focusing on discrete incidents of physical abuse, and discouraged the use of Scott Schedules, which itemise individual instances of abuse, in preparation for fact finding. Subsequent guidance has emphasised that allegations of domestic abuse should only be determined by the court if they are relevant and necessary to the court's decision regarding the welfare of the child.[15]

Alongside the recommendation for a new investigative, safety-focused and trauma-informed process for child arrangements proceedings, the Harm Panel recommended the establishment of a national monitoring mechanism within the office of the Domestic Abuse Commissioner to maintain oversight of and report regularly on the family courts' performance in protecting children and adult victims from domestic abuse and other risks of harm in private law children's proceedings.[16] In November 2021, the Domestic Abuse Commissioner and Victims' Commissioner published a report on a proposed monitoring mechanism for the family courts. The report set out the objectives for the mechanism and a design for the running of a pilot.[17] The objectives of the monitoring mechanism are to increase accountability, improve transparency and identify and disseminate best practice in child arrangements cases involving allegations of domestic abuse, to ensure consistency in delivering safer processes and outcomes in accordance with the broader recommendations of the Harm Panel. The proposed methodology for the pilot comprised two strands: a scoping

exercise of existing administrative data and an intensive study at three court sites, which would both test the design and research methods for rollout of the mechanism and provide baseline data from the courts in the pilot against which future progress could be measured. This report outlines the findings and recommendations of the Family Court Reporting and Review Mechanism (FCRRM) pilot, which began in September 2023.

1.1 Scope of existing administrative data sets

As part of its recommendations for ongoing oversight of the family courts, the Harm Panel identified a need for the development and implementation of consistent and comprehensive administrative data gathering on cases raising issues of domestic abuse, child sexual abuse and other safeguarding concerns. The FCRRM was, therefore, designed to include a scoping exercise to map existing administrative data from the family courts, Cafcass and Cafcass Cymru to establish how far the existing data and processes could be used or adapted for monitoring purposes. The objectives of this exercise were to identify the strengths and limitations of the existing data sets and, if needed, make recommendations for changes to enable effective ongoing monitoring through the routine gathering of administrative data.

While the pilot was in progress, a report was published by the National Centre for Social Research on *Data in the Family Justice System*,[18] which had been commissioned by the Judicial Office on behalf the President of the Family Division as part of the Transparency project.[19] This report addressed the objectives of the scoping element of the FCRRM pilot. The report found that current family justice data provides very limited ability to answer questions about family court processes and outcomes relating to domestic abuse: "Some data is not being captured at all, some data is being captured in a way that is difficult to use (for example, because it only exists in case files), and there is a lack of routine and timely data linkage to other sources."[20] The continuing lack of systematic, publicly available data on domestic abuse cases emphasised the need for the second strand of the pilot – an intensive court study to test how to gather meaningful data for the FCRRM.

1.2 An intensive study at three court sites

In order to provide a systematic account of how the family courts handle child arrangements cases involving allegations of domestic abuse, and the experiences of parties and professionals in such cases, the FCRRM pilot gathered and analysed data from three family court sites operating in England and Wales, selected to provide broad geographical and demographic representation.[21] The dual purpose of this intensive study was to collect baseline data against which future progress can be measured through the monitoring mechanism and to establish the effectiveness of the approaches piloted in the three courts for the FCRRM rollout.

A detailed review of the methodology for the pilot can be found in Annex 1. In summary, the pilot adopted three approaches to data collection:

1. A review of 100 files in child arrangements cases from each of the three courts – 50 finalised by magistrates and 50 finalised by family judges – closed between 1 January and 31 December 2023.
2. Observations of hearings in a sample of live child arrangements cases carried out at each court over a two-week period during March-June 2024.
3. Focus groups with domestic abuse survivors in the area of each court (facilitated by specialist domestic abuse support services),[22] and interviews with judges, magistrates and Cafcass/Cafcass Cymru officers working in each court.

Research for the pilot was conducted by researchers within the Office of the Domestic Abuse Commissioner, under the supervision of two independent academic experts who were commissioned to lead the pilot – Professor Mandy Burton and Professor Rosemary Hunter KC (hon), who were both members of the Harm Panel. The researchers were assisted by an Operational Advisory Board with representation from academia, His Majesty's Courts and Tribunals Service (HMCTS), the Ministry of Justice (MoJ), the judiciary, Cafcass, Cafcass Cymru, the Welsh Government, the Victims' Commissioner and the Nuffield Family Justice Observatory. All necessary approvals for accessing, gathering and processing data were obtained from the University of Leicester Research Ethics Committee, Loughborough University Ethics Review Sub-Committee, the HMCTS Data Access Panel, the President of the Family Division, the Cafcass Research Advisory Committee and Cafcass Cymru Research Advisory Committee.

The three courts for the pilot were selected with the help of the Operational Advisory Board and senior members of the Family Judiciary. They were chosen to provide a good mix of geographical and demographic variables, to enable generalisable insights into the operation of the family justice system in child arrangements cases. One of the courts was in a large city, another in an area of mixed urban and rural populations and one in a more rural area with smaller towns. One of the courts was in Wales and two were in England. All three courts operated under the Child Arrangements Programme (CAP).[23] The sample sizes for case files and observations were sufficient to enable both consistent patterns and variations to be captured and statistically tested. There is no reason to believe that the findings do not apply more broadly to child arrangements cases dealt with in other courts operating under the CAP in England and Wales.[24]

To protect confidentiality, in accordance with the undertakings made to gatekeepers and research participants, the courts and the locations of files, observations, interviews and focus groups are not identified in this report. Data is reported using numbers that were assigned randomly to each data source. Where differences emerged between the courts, the nature of the difference is observed without specifying which courts it applied to. Similarly, we refer simply to 'Cafcass' where relevant, without explicitly differentiating between Cafcass England and Cafcass Cymru, to avoid direct or indirect identification.

1.3 Structure of the report

Part A of this report summarises and analyses the baseline data from the three court sites, including good practices identified through the various data sources. Part B reflects on the methodology and the value of the approaches adopted for the rollout of the FCRRM and makes proposals for the next phase of the FCRRM. Annex 1, at the end of this report, sets out the methodology and the process of gaining permissions for data access in more detail. Annex 2, available on the Domestic Abuse Commissioner's website, comprehensively sets out the quantitative data gathered from observations and case files.

PART A
Baseline findings

2 The data samples

Quantitative data for the pilot study was derived from two sources: observations of child arrangements cases conducted over the course of two weeks at each of the three courts, and a sample of child arrangements case files closed in each of the three courts between 1 January and 31 December 2023. Overall, we observed 95 hearings and reviewed 298 case files. The cases were drawn evenly from each court (99, 99, 100) and were also drawn evenly from cases finalised by judges (151) and by magistrates (147). In the file sample, the majority of applicants (55%) were fathers and the majority of respondents (58%) were mothers, although these proportions varied somewhat between courts. There were very few applications by parties other than parents (6%).[25] The great majority of applications in both data sets were for child arrangements orders, with relatively small numbers of applications for prohibited steps orders (PSO), specific issue orders (SIO) and enforcement.

Most of the observations (82%) were of short hearings (First Hearing Dispute Resolution Appointments (FHDRAs), Dispute Resolution Appointments (DRAs), case management hearings (CMHs) and pre-trial reviews (PTRs). In total, we observed 14 final hearings and three

fact-finding hearings (FFHs), spread fairly evenly between the three courts and judicial tiers, although all the FFHs observed were before judges rather than magistrates. In the file sample, likewise, the majority of hearings recorded were FHDRAs, DRAs and CMH/directions hearings (81%), with a total of 42 final hearings and 12 FFHs.

Qualitative data was also drawn from the court observations, as well as from six focus groups (with a total of 35 participants) and one interview with survivors of domestic abuse in each court area who had experience of child arrangements proceedings, 16 interviews with judges and magistrates from the three court areas, and six interviews with Cafcass and Cafcass Cymru Family Court Advisers working in the three areas. Although, as explained in Annex 1, children were not interviewed for this research, their experiences were captured indirectly through the focus groups with parents and court observations.

Further details of the data samples and characteristics of the parties, children and cases in the case files and court observations can be found in Annex 2.

3 The prevalence of domestic abuse in private law children cases

The fact that family court and Cafcass administrative systems do not collect or report systematic quantitative data on cases involving domestic abuse is an ongoing barrier to the understanding of and effective responses to domestic abuse in the family courts.[26] What we know about the prevalence of domestic abuse allegations in private law children cases is derived from previous case file studies that have systematically sampled cases from selected court sites. The studies conducted between 1999 and 2017 are summarised in the literature review conducted for the Harm Panel.[27] These generally found evidence of domestic abuse in around 50% of cases, although two studies in 2007 and 2017 reported domestic abuse in over 60% of cases,[28] while an HM Inspectorate of Court Administration (HMICA) review of Cafcass files in 2005 found domestic abuse in over 70% of cases.[29]

A subsequent file study by Kieran Walsh sampled from three courts in 2019 focused on applications for child arrangements orders under section 8 of the Children Act identified by HMCTS as having a 'risk of harm' flag. Walsh found evidence of domestic abuse in 72% of these files,[30] although the file sample itself was one in which a high prevalence of abuse allegations was to be expected. Further relevant data can be derived from Cafcass's 2018 Manchester Pilot, which sought to identify and divert cases filed with the court that were suitable for out-of-court resolution. Over the six months of the pilot, only 14-20% of the 1,190 cases filed were deemed suitable to take part in dispute resolution services. The remaining 80-86% of cases were considered to involve safeguarding risks that were too high for out-of-court dispute resolution to be safe.[31] Not all of these would have involved alleged domestic abuse, but it is likely that many would have done so.

The methodology adopted for identifying cases involving domestic abuse was opaque in many of the previous studies. In this context, one of the concerns raised by the Harm Panel was that family courts are not adept, or consistent, at identifying domestic abuse in the cases before them.[32] Thus, for example, a 'risk of harm' flag may be under-inclusive, and in fact, there did not appear to be any flagging system in place in the three courts from which our sample was drawn.

In this pilot study, we identified a file as involving domestic abuse if domestic abuse was raised as an issue either by a party or a professional at any point in the proceedings. In observations, we identified a case as involving domestic abuse if domestic abuse was mentioned either by a party or a professional during the observations.[33] This methodology would be likely to yield a higher prevalence figure from files than from observations, since files cover the entire case whereas observations only capture a snapshot of the case at a single point in time.

Accordingly, we found evidence of domestic abuse in 73% of observed cases and 87% of case files.[34] There was some variation between court sites and (as would be expected) between judicial tiers, but in all cases the proportions were high, ranging from 84% to 91% of case files, and from 81% of cases finalised by magistrates to 93% of cases finalised by judges. These findings strongly reinforce the view that domestic abuse is not exceptional or even as likely as not to be present in private law children cases. Rather, it is the 'everyday business' of the family courts, present in most cases at all levels. It is noteworthy, however, that although the existence of domestic abuse was mentioned in 73% of the hearings observed, it was only considered to be a live issue in 42% of hearings. The reasons why and the processes by which domestic abuse may become sidelined or classified as irrelevant in child arrangements cases are explored in the remainder of the report.

3.1 Types of abuse

We did not attempt to classify the types of abuse raised in our court observations, because such data was likely to be incomplete and unreliable. For the case files, however, the types of abuse were recorded, as shown in Table 1, below.

Table 1: Prevalence of different types of abuse (case file sample)

Type of abuse	% of cases with domestic abuse
Psychological or emotional abuse	76%
Physical abuse	56%
Coercive and controlling behaviour	35%
Violent or threatening behaviour	32%
Economic/financial abuse	20%
Sexual abuse	14%

The majority of cases in which domestic abuse was raised (57%) included mention of two or three types of domestic abuse. This did not vary by tier of judiciary. The only significant differences between judicial tiers were in relation to physical and sexual abuse. Cases involving these types of abuse were more likely to be allocated to a judge rather than to magistrates,[35] whereas there was no significant difference in the allocation of cases raising other types of abuse, including coercive and controlling behaviour. This indicates that physical and sexual abuse continue to be assessed as more 'serious' compared with other types of abuse, and the seriousness of coercive and controlling behaviour continues to be downplayed, contrary to the statements of the Court of Appeal in *Re H-N*.[36]

As discussed later in Part B, however, the C1A form – the Family Court form for reporting allegations of harm and domestic violence – does not include a tick-box for coercive and controlling behaviour, so the initial identification of this form of abuse is reliant solely on safeguarding enquiries conducted by Cafcass or Cafcass Cymru. Thus, the gatekeepers who allocate child arrangements applications to the relevant tier of judiciary may have no information about coercive and controlling behaviour at the point of initial allocation. In the file sample, 12% of cases overall were reallocated to a different tier during the course of proceedings, with the great majority of these moving from magistrates to judges. And there was a correlation between change of tier and the emergence of allegations of coercive and controlling behaviour.[37] But in the great majority of cases with allegations of coercive and controlling behaviour, there was no reallocation, suggesting that the seriousness of these allegations was not recognised.[38]

3.2 Cross-allegations and allegations of parental alienation

In interviews, judges and magistrates said that the most typical response to allegations of domestic abuse was denial, followed by cross-allegations of domestic abuse, with counter-allegations of parental alienation less commonly raised. The main sources of evidence on cross-allegations or counter-allegations of domestic abuse and allegations of parental alienation in the case files were the safeguarding letters filed by Cafcass or Cafcass Cymru at the outset of the case, and statements filed by the parties. In the small number of cases in which Scott Schedules were filed (see below), they provided a further source of evidence of counter-allegations of domestic abuse. From these sources, there was evidence of cross- or counter-allegations of domestic abuse in almost one quarter of cases in the file sample (22%).

Allegations of parental alienation were much less frequent, with only 9% of files containing evidence of allegations of parental alienation against the mother, and 3% containing evidence of such allegations against the father. This belies the notion that parental alienation (or allegations thereof) is/are rife among separated parents. The fact that cases involving allegations of parental alienation may become extremely protracted and have very serious consequences for parents and children gives them a degree of visibility

and prominence that does not necessarily reflect their numerical incidence. That said, we also noticed in our court observations that parental alienation was referred to more often implicitly than explicitly. Only 4% of the cases observed included explicit allegations of parental alienation, but, in a further 13% of cases, aspersions were cast on one of the parties by the other party or by Cafcass or the court, using language that implicitly invoked the possibility of parental alienation. In Observation 24, for example, the father said: "I think the children are being manipulated … why have they lost trust in me? … because of inappropriate things shared by the mother." This implicit allegation was made in the context of the father's partial admission of physically pushing the younger child. The extent of implicit allegations of parental alienation varied substantially between the court sites, ranging from 23% of observations in one court to only 5% in another, suggesting that local court cultures may be more or less receptive to such allegations.

All of the cases in which parental alienation was alleged in the case files also involved allegations of domestic abuse. There were no cases in which parental alienation allegations were made independently of domestic abuse being raised as an issue. This reinforces the close association between domestic abuse and parental alienation allegations, and the fact that parental alienation is more often than not a counter-allegation to domestic abuse and, as other research suggests, may be part of an ongoing pattern of coercive control post separation.[39]

3.3 The identification of domestic abuse

There were a number of sources of evidence regarding domestic abuse in the case files, with the main sources being safeguarding letters (81%), the C100 form (application for an order under s8 of the Children Act 1989) (69%) and the C1A form (65%). Other prominent sources were claims for a MIAM exemption for domestic abuse (31%), mothers' statements (34%) and section 7 reports (29%).

Given that we found evidence of domestic abuse in 87% of the case files overall, it is notable that none of the three main sources was comprehensive or could be relied upon as the sole source of evidence of the presence of domestic abuse. The existence of domestic abuse evidenced elsewhere on the file was not mentioned in 19% of safeguarding letters,[40] 31% of C100s and 35% of C1A forms (with a C1A filed in only 59% of cases). Moreover, even if a C1A form is completed, the constraints of the form allow only for a brief description of 'what happened', and the guidance notes at the end of the form refer to 'information about incidents'. Survivors felt that they had to fit their experience into a strict format that did not allow them to convey the bigger picture of abuse.

> ***"They're very small and focused questions – you don't get the chance to explain how you got to that point."***
>
> **Survivor, Focus Group 4**

Both the quantitative and qualitative data reinforce the need for courts to remain alert to the issue of domestic abuse throughout proceedings (including the possible need to revisit initial allocation decisions), and to avoid premature conclusions that domestic abuse does not feature in a case or is not a relevant concern.

The relatively low rate of MIAM exemptions based on domestic abuse is at least partly accounted for by the fact that fathers were more often applicants than mothers. When broken down by gender, 44% of applicant mothers claimed an exemption on the basis of domestic abuse, compared with only 17% of applicant fathers. Where the applicant did attend a MIAM, it was more likely that the respondent would decline to attend or fail to engage in cases involving domestic abuse. There was evidence of both parties having attended a MIAM in only 11% of cases in the file sample, which is consistent with the finding that domestic abuse was an issue in 87% of cases.

4 The courts' responses to domestic abuse – the persistence of structural barriers

The qualitative data from focus groups with survivors, interviews with Cafcass, judges and magistrates, and observations of court hearings revealed the continuing significance of the four structural barriers identified by the Harm Panel: a pro-contact culture, adversarialism, resource issues and silo working. The quantitative data on case processes reinforced this at many points. Where the accounts given by survivors sometimes conflicted with the perspectives of professionals, the quantitative data tended to provide support for what survivors said about their experiences of the family court.

4.1 The pro-contact culture

Nearly all the survivors spoken to said that they were often made to feel that domestic abuse was irrelevant to contact because the professionals indicated that contact would go ahead irrespective of any abuse. Survivors described being discouraged from raising allegations of domestic abuse by Cafcass, the courts, and sometimes their own lawyer (if they had one), because contact would be ordered regardless.

4.1.1 Cafcass

Survivors spoke of Cafcass being reluctant to record their allegations of domestic abuse. In relation to the safeguarding interview, one mother said Cafcass told her:

> ***"... 'I do believe you but it's all going to basically be scrapped ...all the video evidence of him being aggressive and everything, it's going to be scrapped, we're not going to show it in court or do anything about it.' And then I just felt like, quite deflated ... I don't get it, like so, whether we go into abuse or not, the other half gets to see them anyway, so is it best to shut up and just deal with it ... ?"***
>
> **Survivor, Focus Group 3**

Survivors described lack of confidence in Cafcass officers due to their approach when they raised domestic abuse. For example, in Focus Group 4, the following exchange took place:

> ***"... all Cafcass said was 'Get the help you need, move on'."***

> ***"[the Cafcass officer] ... asked me what the abuse was like and I picked out a couple of things and she just stared at me and said, 'Why didn't you just leave him?'"***

Another survivor in Focus Group 7 said when she got a new Cafcass officer:

> ***"... she rang me and said, 'Don't worry ... I've been doing this for six years, I know what I'm doing' ... that gave me confidence, but when I actually met with her ... she actually said to me, 'Well, you know, I do know some mums who've been stabbed by dad, and they still get contact, so you might want to prepare yourself' ..."***

Some survivors said that they had been told that it would be better not to put themselves through the prospect of cross examination on domestic abuse allegations.

> ***"... one of the Cafcass workers, she was saying that it's an allegation and I was like – I know. And she was saying that, looking at it, because he doesn't have a criminal record, there is going to be access, so why be interrogated in the court, you won't like it."***
>
> **Survivor, Focus Group 3**

Survivors said that they frequently heard from Cafcass that in the absence of criminal convictions, direct unsupervised contact would be ordered.

> ***"She said 'But you can't stop [Dad] from seeing them ... he's not, has he got a criminal record?'"***
>
> **Survivor, Focus Group 3**

Even in some cases where there were convictions for 'serious' physical abuse, survivors said that Cafcass told them that it would not stop contact in some form. One survivor said that the Cafcass officer told her that, following the safeguarding interview with the father, she did believe that there was domestic abuse, but nevertheless, if "the judge thinks there is no significant harm, then her dad should have her half the time" (Survivor, Focus Group 4).

Consistently with what survivors said, Cafcass interviewees suggested that they had a high threshold for regarding domestic abuse as relevant to child arrangements. They said that they looked for police involvement and convictions and, where these were absent, it would be more difficult to include allegations of domestic abuse in reports for the court.

> ***"... when you've got a lack of professional evidence in the way of police information or, you know, a previous conviction, that's where it becomes...a little bit complicated."***
> **Cafcass, Interview 24**

> ***"I say if there's very little evidence and one parent is saying 'Oh, actually, well it didn't happen, because look, there's no evidence, I have never been involved with the police in my life' ... that can make it more difficult ..."***
> **Cafcass, Interview 13**

However, the second interviewee quoted above did acknowledge that there might be "various reasons" why domestic abuse was not reported to the police, and "it doesn't necessarily mean it didn't happen."

In making risk assessments, Cafcass professionals may continue to put emphasis on whether children have been directly harmed by or witnessed abuse rather than 'simply' living in the same household, although the Domestic Abuse Act 2021 specifies that children are victims of domestic abuse if they see, hear or experience the effects of abuse. In relation to an incident reported to the police, one Cafcass interviewee said further "analysis would be required" to consider:

> ***"Has the child been exposed to the incident? ... it could be that, you know, issues of domestic abuse have been reported but the child hasn't necessarily been exposed to that."***
> **Cafcass, Interview 13**

This is the pro-contact culture in operation: minimising abuse in all but the most 'severe' cases where children have been physically injured or witnessed physical abuse of their parent. Nonetheless, even when present, physical abuse of a child was not always a barrier to contact. In Observation 24, the father was alleged to have pushed the child, but the section 7 reporter did not see this as a barrier to contact, and the magistrates made an interim order for stepped overnight contact pending a final hearing which would consider the outcome of a Multi-Agency Risk Assessment Conference (MARAC). The discussions between the magistrates and their legal adviser suggested that they were unsure what a MARAC is; they appeared to confuse it with mediation.

The survivors' accounts are reflected in the fact that in over 20% of the cases in the case file sample in which abuse was reported to Cafcass in the safeguarding interview, it was disregarded or not included in the recommendations in the safeguarding letter. Thus, in cases in which domestic abuse was raised as an issue, while allegations were noted in 81% of safeguarding letters, they were validated by the FCA in only 64% of letters overall. This proportion varied significantly between courts, ranging from 52% to 78%.[41]

In the court with the highest rate of validation, survivors generally recounted positive experiences with Cafcass, who had taken their experiences and concerns seriously and recommended that contact be restricted (Focus Group 2). The survivors found, however, that the court often did not follow these recommendations.

4.1.2 Judiciary

FCAs' minimisation of abuse may be partly attributable to their perception of a high threshold for judicial acceptance of the relevance of abuse to contact. Some survivors said that Cafcass explained the irrelevance of abuse in terms of anticipated judicial decision-making. Other survivors, particularly those in the focus group noted above, reported that even when the FCA had raised domestic abuse as a welfare issue, they had experienced judicial resistance to acknowledging the abuse and its relevance. In this focus group, three survivors said that judges went against Cafcass recommendations.

> ***"I was told by Cafcass and the report by the Cafcass officer - she's done the three islands I think it was – and my little boy, he said he wanted to put dad on the 'never' island. And when we went back into court and the Cafcass report was read, the judge's words [to the father] were … 'I assume you want to appeal this because it's heavily weighted on the mother's behalf … I'm not happy with Cafcass' recommendations for contact', [to Cafcass] 'I want you to go and rewrite it'."***
>
> **Survivor, Focus Group 2**

Another survivor in this focus group said that the judge told her that she should have 'walked away' and that, again, although Cafcass did try to persuade the judge that domestic abuse was a safeguarding issue, the risk did not appear to be considered.

Observations also confirmed that in some cases where Cafcass regarded domestic abuse as relevant to contact, the pro-contact culture and minimisation of abuse could still result in a different view being taken at court. In Observation 95, the judge finalised an order for quick progression of contact although Cafcass had stated in the section 7 report that a fact-finding hearing would be required if the judge was considering making an order for unsupervised contact. In Observation 9, the domestic abuse was regarded by Cafcass as so high risk that they had indicated that if the parties had reconciled, they would have been recommending a section 37 report by the local authority. Nevertheless, the magistrates decided that the domestic abuse was not a concern because the parties were not planning to reconcile and no longer lived in the same city. Weight was placed on the mother not being 'hostile' to

contact, therefore it should go ahead, although observation of an out-of-court discussion between the mother's representative and the magistrates' legal adviser suggested that the mother might have been pressurised by her own lawyer to agree. One of the survivors in a focus group told the researchers that her legal representative had agreed to contact even though she was opposed.

> ***"My barrister said 'Don't worry, I've already agreed an order without you being there.' Where I was putting across no contact, the barrister had agreed and put that to the judge as my agreement and completely took my voice away."***
>
> **Survivor, Focus Group 2**

When commenting on typical responses to domestic abuse, all the judges and magistrates said in interviews that cases where a perpetrator makes an admission of abuse are rare. However, in one case where the father did admit domestic abuse in court, the survivor said that the judge continued to disbelieve that it could have happened "unless he was provoked" (Survivor, Focus Group 4). In this case, the survivor said that she had been prepared by the Cafcass officer for a pro-contact response and this happened despite the father's admissions to imprisoning her in the house and kicking and punching her.

In judicial interviews and case observations, it was common for judges to say that they would put parties under pressure to reach an agreement even if there was domestic abuse. As one magistrate said: "Either you come to an agreement where you both agree [contact]…or we will decide what's gonna happen … and you've got no choice in the matter" (Magistrate, Interview 32). Some survivors said that they were told that unless they withdrew domestic abuse allegations and agreed to contact, an order would be made to remove their children. One mother spoke about withdrawing allegations of child sexual abuse and agreeing '50/50' due to the judge indicating she would make a 'live with' order for the father if she persisted with allegations (Survivor, Focus Group 5). A mother whose former partner was being prosecuted for domestic abuse said that she felt the judge was pressuring her to drop the allegations in the child arrangements case even while that criminal case was pending, by warning her that the children might be taken into care if she continued with the allegations (Survivor, Focus Group 2). In *Re H-N*, the Court of Appeal was critical of a mother being coerced into agreeing contact under the threat of public law proceedings.[42]

4.1.3 The assumption of contact

Both magistrates and judges expressed the logic in interviews that the norm of contact rendered most domestic abuse allegations irrelevant. One magistrate said: "The majority of cases would end up with some sort of stepped programme into full contact … that's something that we would expect to see eventually" (Magistrate, Interview 15). Another noted that it was rare to go into the details of alleged domestic abuse: "We are very reticent to go there unless it's really necessary" and, while domestic abuse might have happened, "they can still get over it … (and) it's not necessarily going to be that relevant to what you're actually trying to get to, at the end of the day" (Magistrate, Interview 21). Domestic

abuse was considered to be more relevant to the parents than to the welfare of the child: "The arrangements for the child are not dependant on what happened between the parents … Mum might say all of these horrible things have happened", but Cafcass would usually say it was safe for contact to proceed, so "we will very usually go with the Cafcass recommendation." (Magistrate, Interview 16).

These comments suggest that there is a view among magistrates that contact should happen except in very rare cases where Cafcass say that the risk cannot be managed in any way; and "usually [Cafcass] state very clearly how that can be managed" (Magistrate, Interview 16).

All the judges interviewed also indicated that no-contact orders were a 'last resort' and even in the worst cases of domestic abuse the door to contact should be left open in some form. In that context, they observed that there was often little point in having a detailed enquiry into the domestic abuse.

> ***"Very rarely do you find that you've gone through a finding of fact process and the end result is no contact … Why do you need a year of litigation to get to that point?"***
> **Judge, Interview 12**

Another judge said: "It is rare that the father is so vile that he won't get some contact' (Judge, Interview 18).

Like the Cafcass and magistrate interviewees, some judges indicated their view that unless children are directly involved in the abuse, they are unlikely to be harmed by it.

> ***"The child is quite often, to some extent, insulated from the direct conflictual interaction … if they haven't been directly involved in the abuse or the assault themselves, or regularly witnessing it … how's the child going to be affected?"***
> **Judge, Interview 25**

Judges indicated that they would be making clear to the parties early on in proceedings that domestic abuse is not a barrier to contact.

> ***"It's quite difficult because if you have a party, often a woman who says that they have been a victim of domestic abuse, which is so impactful on them, you're sitting there saying to them, putting it in basic terms, 'Well you have to put that to one side and essentially get on with it because the system says that it's in the child's best interests to have a relationship with the father'. I mean, that's quite a tough conversation to have, but yes, it's a conversation that you end up having."***
> **Judge, Interview 12**

Another judge said that there is no "magic wand" to stop contact; some mothers who have experienced domestic abuse would like that, but once they are told it cannot be achieved, they are generally accepting (Judge, Interview 25). The focus groups, however, belied any notion of acceptance on the part of survivors. The exercise of the court's authority leaves them feeling unfairly treated, undermined and betrayed.

4.1.4 'Historic' allegations

The idea of abuse being 'historic' after a few years, or even months, was frequently raised. One judge referred to a case where the mother's lawyer was arguing that older allegations were relevant due to the father's continued denial of abuse even though he had convictions.

> ***"The first of the allegations was that he had slapped the mother in 2013, and I said, 'Why is this relevant? … in terms of working through this, how is this going to help in 2024 for welfare analysis?'"***
>
> **Judge, Interview 12**

The magistrates interviewed also agreed that older allegations would not affect contact.

> ***"Sometimes they'll come to us with 40 different issues and, you know, we'll reduce it down to about four or five and say … these are the ones that happened in the last 18 months, two years, rather than something that happened 22 years ago, which is sometimes brought up, and you're thinking, 'Oh, hang on a second, let's have a look and see what's more relevant now'."***
>
> **Magistrate, Interview 22**

These comments illustrate how a long-term pattern of coercive and controlling behaviour may be reduced to a small number of decontextualised recent incidents, which consequently have much less force or capacity to influence contact.

4.1.5 Not whether but how

Even if it is accepted that domestic abuse has taken place, most judges and magistrates said that it would only be relevant to how the contact was arranged, rather than to the principle of whether contact should take place. In the words of one judge, allegations might be relevant but 'not in the way that the parties think'; it would not stop contact, but the fact that it was still being raised may be relevant to "where the handover is going to be" (Judge, Interview 12).

Judges would frequently say that it was the quantum rather than the principle of contact that was in contention. In observations, both magistrates and judges would urge parties to be more 'child focused' – generally, this meant that the survivor was raising domestic abuse as an issue rather than focusing on a solution for making contact happen. In Observation 67, the magistrates were dealing with a case where the father was on bail for assaulting the mother. While the mother was not objecting to contact, she wanted reassurance that the father could care for the child as he had substance abuse issues. The magistrates did not order

substance testing and admonished the mother when she raised concerns about threats made to her family. The chair of the bench stated:

> ***"We're not looking into who did what … you need to put the children first…you need to make that a priority."***

In Observation 68, the case was listed for a FHDRA before magistrates and the mother's lawyer again appears to have been complicit in minimising the abuse, assuring the court that she did not want to pursue allegations relating to non-physical abuse. The magistrates finalised a consent order for overnight contact to progress to the father having the child almost half of the time. This was even though, only three months previously, the mother had fled to a refuge, and social services had been involved in arranging accommodation. Special measures were removed once the contact was agreed, and the magistrates congratulated the parties for "put[ting] the child first".

In summary, the qualitative data shows that the pro-contact culture remains pervasive in the family courts and has not been mitigated by developments following the Harm Panel report.

4.2 Adversarialism

For courts operating under the CAP, the adversarial process still dominates the litigation of child arrangements cases, particularly where domestic abuse is alleged. However, the qualitative data from focus groups suggests that this often leaves survivors feeling disempowered. Survivors said that either they did not know how to make a case within the rules, or they felt that the perpetrator had advantages in the adversarial process and that it is an uneven contest: 'It's all controlled by the strongest person in the room, who is usually the perpetrator' (Survivor, Focus Group 4). As the Harm Panel noted, the adversarial process is premised on both parties having legal representation and is not designed to meet the needs of litigants in person (LIPs).

In both the observations and the case files, there was a fairly even split between cases with both parties represented, only one party represented, or neither party represented. There was a substantial difference in representation patterns between courts, however. Cases in the file sample with both parties represented ranged from 19% to 45%, while cases with neither party represented ranged from to 26% to 51%. These differences are attributable to differential eligibility for legal aid in the different court areas, and possibly also greater affordability of legal representation for parties not eligible for legal aid. Nevertheless, the huge cost of legal fees and the limited availability and effectiveness of legal aid, as well as the difficulties of representing themselves in court, were common themes that emerged in the focus groups with survivors from all court areas.

4.2.1 The absence of legal representation

LIPs do not understand how to fill out forms, present their case or furnish evidence.[43] In the absence of legal representation, the process of gathering information and evidence, from initial forms to court hearings, restricts the responses that parties can give through closed questions, which provide limited opportunities for them to give an account in their own words.[44] Thus, parties struggle to get their concerns onto the court's agenda at the outset, and are subsequently told that it is too late to raise them because the issues in dispute have already been determined.

Survivors spoke about the difficulties of putting together a case without legal advice.

> ***"I went to see if I could get a solicitor but my, I was literally just over the threshold to get legal aid … so through all the five years of it I was just representing myself … it was really hard to know how to word things."***
>
> **Survivor, Focus Group 3**

Another survivor spoke of being "like a rabbit in the headlights", not understanding the "jargon" and saying nothing "for the first two and half years" (Survivor, Focus Group 5). Judges commented on the challenges for litigants in person in presenting an argument and responding in turn.

> ***"They get frustrated, they get annoyed with you and the other party. They want to have their say there and then, whether or not it's their turn…it's an issue that you've got to keep close control on."***
>
> **Judge, Interview 12**

Where both parties are unrepresented, the judge or magistrates' legal adviser may be required to do the 'heavy lifting' of establishing what the parties want to say and determining whether there has been domestic abuse and its impact. However, when judges and magistrates were prompted in interview to reflect on whether, and in what circumstances, they would ask the parties if there was domestic abuse in the relationship if neither had raised it, the majority said they would never do that. Two judges (Interviews 12 and 18) said that possibly they would ask the parties about domestic abuse if it had not been raised, but it would only be in very rare and exceptional circumstances, where the demeanour of a party and the cultural context of the case suggested something might not be being said. One judge indicated that she would be alert to minoritised women who may lack family and community support and, therefore, be less willing or able to raise abuse directly in the family court, perhaps demonstrating some insight into the potential intersectional barriers to raising domestic abuse.[45] In general, however, the adversarial approach relies heavily on the parties actively identifying and naming abuse for the courts and persuading them of its relevance, something that LIPs are ill-equipped to do.

Where one party is represented but the other is not, the adversarial approach also comes under strain, since adversarial theory requires equally matched parties to 'test' the strength of each case. It was clear from observations that unrepresented fathers facing allegations of domestic abuse struggled as LIPs. However, from the observational data, typically the courts would make some adjustments to accommodate the fact that fathers were unrepresented if the mother had a lawyer, either relying on the mother's lawyer to explain the process and any reports to the unrepresented party, attempting themselves to address the father's lack of representation in court, or a combination of both. Some survivors felt that the 'neutrality' of the court was compromised by legal advisers and judges intervening to help unrepresented parties.

> ***"I feel because he represented himself, he had more rights in that court than I did, 'cause I had a solicitor to back me up, and they listened to him over me … It was just more favouring him because he went solo."***
>
> **Survivor, Focus Group 2**

Similarly, the male survivor interviewed said that he felt the unrepresented mother was treated "overly leniently" by the judge and allowed "second chances". From a gender perspective, he also said that he felt that the judge looked upon him less favourably because he was legally represented, assuming a male survivor who could afford a lawyer could not be a vulnerable party. Observations suggested that proceedings where alleged perpetrators were unrepresented could be prolonged as, typically, fathers failed to comply with basic process requirements, such as filing a position statement. This was difficult for survivors, especially those who were paying for their own representation and, as discussed in the Resource Limitations section later in this report, this could be linked to using litigation to perpetuate abuse.

Organisations such as Support Through Court (STC)[46] and CLOCK[47] have developed to fill a small part of the gap in legally-aided representation left following the Legal Aid, Sentencing and Punishment of Offenders Act 2012. These organisations rely on volunteers to provide emotional and some practical support and assistance to litigants in person in family courts, although they do not offer legal advice or other legal services, and their capacity is limited. One of the three courts in the pilot study had an STC office on site, but the researchers did not see any STC volunteers accompanying LIPs in court during observations, although in one case the LIP father was told by the court to seek their help. Two survivors described a positive experience of using STC. One survivor felt that even if STC were unable to advocate for them within the proceedings, the fact they were in court and taking notes ensured the judge or magistrates were "a bit more fair".[48] However, there were clear limits to the ability of STC volunteers to support survivors. Another survivor explained that the STC worker did speak during their hearing and asked the judge why domestic abuse was not being considered when it was such an important part of the case, but was told off for doing so.

4.2.2 The role of legal representatives

As discussed previously, legal representation does not always mean that domestic abuse is handled sensitively and appropriately.[49] Some survivors who had legally aided representation did not feel that this helped them. They said they became disillusioned with their own lawyer being dismissive about things that they wanted to raise or taking decisions without them and discounting the domestic abuse. In one focus group, survivors spoke about being told by their own lawyers not to raise domestic abuse or they would be accused of "alienating behaviours" (Survivor, Focus Group 2).

The 'equally matched' premise of the adversarial model ignores the fact that the kind of representation that a party may have will be influenced by the resources available to them. Survivors said that they felt that legally aided representation was less effective than if they had been able to afford their own privately funded lawyer.

> ***"I got legal aid, which I'm really grateful for, but I really don't feel like they put as much emphasis on the case as they do for if you're private paying. Some of my statements were shambles, and even the judge commented on that … I don't feel they're as prepared in the legal aid system as they are prepared in the private sector."***
>
> **Survivor, Focus Group 3**

> ***"His barrister, because he's got a lot of money and I was legal aid, she ripped me… apparently, she's the best one in the area."***
>
> **Survivor, Focus Group 2**

Although the researchers did not interview lawyers, they did frequently observe cordial interactions between the professional players in the courtroom, who would often sort things out between themselves in the absence of their clients (in a way that did not always appear to be what their client wanted or had instructed). As 'repeat players' in the process,[50] lawyers' relationships with the court are more salient than their relationships with individual clients. In that context, responding to court culture or the expectations of other professional repeat players may be more influential than their client's interests or instructions. This approach is disempowering for survivors, some of whom told the researchers that they were better off when they no longer had representation.

> ***"I did manage to get legal aid and I was represented in the court and no disrespect to solicitors or barristers, but I got a better outcome having [support worker] with me and speaking, for the last two hearings, myself. And, you know, my solicitor did get in touch with me … she said … 'Your legal aid's come back through, we can represent you'. And I said, 'Well, if you don't mind, I'd rather not'."***
>
> **Survivor, Focus Group 5**

There was a judicial expectation that lawyers, where present, would broker a settlement. This was associated with a concern expressed by judicial interviewees that an adversarial approach encouraged parties into entrenched positions, which would undermine their ability to 'make contact work'.

> ***"The problem with all of this stuff is, in trying to get to safety, and to some extent, the truth, we're going over all of these things again and again and again, and we're doing it in an environment which is highly charged, unnatural, designed for adversarial sorts of outcomes. We're essentially encouraging the parties to have a go at each other and that's not helpful."***
>
> **Judge, Interview 12**

However, in a context in which the majority of parties in the family court are LIPs, the problem with the adversarial process is not that it creates entrenched positions that conflict with the pro-contact culture. Rather, the problem is that parties come to court with disputes over child welfare, which they have been unable to resolve with the other resources available to them, and the adversarial process prevents the court from properly understanding and helping to resolve those disputes.

4.2.3 Fact-finding hearings

The high point of adversarialism in the family courts is the fact-finding hearing (FFH). Practice Direction 12J specifies that FFHs should be held where allegations of domestic abuse would be relevant to any child arrangements order that the court might make, and where the disputed nature of the allegations makes it necessary for the court to make findings in order to provide a factual basis for subsequent risk assessment and recommendations on the child's welfare. FFHs, however, are resource intensive and significantly prolong proceedings. Both PD12J and the Guidance for Judges and Magistrates on Fact-finding Hearings and Domestic Abuse in Private Law Children Proceedings, issued by the President of the Family Division in May 2022, stress that a fact-finding hearing should only be held where it is necessary and proportionate to do so.

4.2.3.1 The avoidance and infrequency of fact-finding hearings

There was widespread agreement among the judiciary in interviews that an FFH, or any contested hearing with evidence, should be avoided if possible. Two main reasons were given for this. One was that these adversarial hearings served to entrench conflict.

> ***"If I think that there's a chance of them coming together and putting everything behind them, and that will be good for the child, I generally very much discourage a fact find because with a fact find people have to stand in the witness box and say things that cannot be unsaid, and it generally just reignites all of the hostility and conflict that you hope you can move on from."***
>
> **Judge, Interview 29**

The other was that such hearings typically involve little evidence other than that of the parties – whether due to the absence of available evidence or a decision has been taken not to draw on evidence from third parties – which makes it very difficult for the court to determine the 'truth'.

> ***"Because you can get an awful lot which is basically down to 'He said, she said', and then it's all down to do you believe one or the other."***
> **Magistrate, Interview 32**

> ***"There's no other corroborating evidence, there's no other supporting evidence, it's just literally one person against the other."***
> **Judge, Interview 14**

Consistently with these views, survivors in the focus groups described how they were discouraged from asking for an FFH by the courts and Cafcass.

Previous research has identified that FFHs are held in only a very small proportion of cases,[51] although the amount of court and judicial time they consume invests them with a much greater degree of visibility. As discussed in this report's Introduction, since the most recent research, factors that might have increased the number of FFHs include the passage of the Domestic Abuse Act 2021, the Harm Panel report and the Court of Appeal's decision in *Re H-N*.[52] On the other hand, the judiciary have attempted to reassert the boundaries around fact-finding hearings in the case law[53] and the May 2022 guidance.[54]

In our court observations, we were prepared to over-sample FFHs because of their particular relevance to the pilot study. But during our two-week visits to each of the three courts, we were able to observe only one FFH in two of the courts. For the third court, we were compelled to return some weeks later specifically for the purpose of observing an FFH. In total, then, FFHs constituted only 3% of the hearings in our observation sample. In the case files, FFHs were likewise held in only 4% of cases (n=12).

There is no need for an FFH if domestic abuse is admitted or otherwise clearly established. Thus, it would not be expected that FFHs would be required in every case in which domestic abuse is relevant. However, compared with our finding that domestic abuse was raised in 87% of cases, only 4% of cases with an FFH appears very low indeed. The case files indicate a process of attrition from allegations to hearings not dissimilar to that occurring in rape complaints in the criminal justice system.[55]

As noted above, where domestic abuse was an issue in the case, it was identified in 81% of safeguarding letters in the file sample. However, only 8% of safeguarding letters in these cases (n=20) recommended that the court consider an FFH. This suggests that, in a high proportion of cases, Cafcass classified the allegations as not requiring a factual determination before the court could proceed to make a child arrangements order.

The court actively considered whether to hold an FFH in a higher proportion of cases raising issues of domestic abuse (23%, n=59) than those including a recommendation by Cafcass. In the majority of these 59 cases, however, it decided not to do so (70%, n=41), although this figure varied between courts (50%-79%). In six cases, an FFH was scheduled but did not proceed, and in the remaining 12 cases, the FFH proceeded. Nine of the FFHs were before a judge and three were before a bench of magistrates.

Cafcass interviewees also indicated that it was very unlikely for there to be an FFH, even if they thought there should be one from a safeguarding perspective: "Sometimes I wish that they would just do them if there's significant allegations, just do them" (Cafcass, Interview 26). The FCA often will not be present when the decision about whether to hold an FFH is made.

> ***"I've recommended a fact find … and I've not necessarily been there for that hearing, because it would be a DRA. Discussions would have then been had with parents who have then said, 'Well actually oh, you know, you make sense, maybe we don't need it'. Then the judges have dismissed it."***
>
> **Cafcass, Interview 28**

It is notable that all of the FFHs that proceeded included allegations of physical or sexual abuse, indicating that such allegations are both considered more 'serious', and are more easily itemised and determined in a contested hearing, as discussed in the following sub-section. By contrast, where the court considered whether to hold an FFH in relation to contested allegations of coercive and controlling behaviour, it was more likely to decide not to schedule an FFH.[56]

4.2.3.2 Preparation for fact-finding hearings – the continuing reliance on Scott Schedules

In *Re H-N*, the Court of Appeal accepted that Scott Schedules in which individual allegations of abuse are itemised are not an adequate mechanism for understanding patterns of abuse in a relationship, and in particular for capturing the existence of coercive and controlling behaviour. It therefore advised that courts should seek narrative statements from the parties rather than Scott Schedules in preparation for an FFH.[57] In interviews, judges said that they still regularly encountered Scott Schedules (ordered by other judges), despite the guidance in *Re H-N*. The evidence from the files corroborated the fact that Scott Schedules are still often used when FFHs are directed or being considered. Of the 59 cases in the file sample in which an FFH was considered, 24 had a Scott Schedule on file. They were typically ordered either alone or in conjunction with narrative statements rather than being replaced by narrative statements. Only five cases had narrative statements alone on file, as shown in Table 2. Notably, 21 of the 24 cases with a Scott Schedule had commenced after the decision in *Re H-N*:

Table 2: Scott Schedules and Narrative Statements in case files

	Scott Schedule alone	Both	Narrative statement alone
Fact-finding scheduled	4	8	4
Fact-finding not scheduled	6	6	1
Total	10	14	5

Scott Schedules were more likely to be ordered by judges than by magistrates, and there was also considerable variation between the three courts in the ordering of Scott Schedules, with one court making frequent use of them while another had very few on file. This suggests that the continued recourse to Scott Schedules may also be a matter of local court cultures and practices.

The mean number of allegations in the Scott Schedules filed was 14.5, median 11. Cases before the judiciary had a higher mean number of allegations than cases before magistrates. The lowest number of allegations in any case was two, while the highest was 71, which obviously suggests a pattern of behaviour that could have been approached as such. There was evidence in seven cases that the number of allegations to be included in the Scott Schedule had been limited by the court. The majority of the Scott Schedules itemised individual 'incidents' of domestic abuse rather than being organised by reference to sample allegations, categories of domestic abuse or patterns of behaviour. The continuing focus on incidents suggests that procedural barriers continue to exist to the recognition of patterns of abuse and coercive and controlling behaviour.

In their responses to Scott Schedules, the parties against whom allegations were made most often denied the allegations, although in around half of the responses there was some degree of partial acceptance.

4.2.3.3 The process of fact-finding hearings

Of the 12 FFHs in the case files and three in the observations, the longest FFH hearing was five days, the shortest only four hours. The mean length of FFHs in the case files was 2.2 days, median two days. Six of these FFHs involved witnesses other than the parties, with an average of two additional witnesses.

In the observed five-day FFH, the mother was represented by a legal aid lawyer, and the father had a QLR for cross examination. The hearing was structured around a number of specific allegations of physical, sexual and verbal abuse, including rape, itemised in a Scott Schedule. The cross examination by the QLR focused on undermining the mother's credibility by pointing to inconsistencies in her evidence as to when specific incidents occurred.

QLR: ***"Given the amount of detail, why did you mix the events up so much?"***

Mother: ***"I didn't mix them up."***

QLR: ***"Did you reread that statement and see that it did not make sense?"***

Mother: ***"Do you know when you are in an abusive situation, your memory is not always complete, you can remember some small things in detail but other big things you might not. I might remember what colour top I've got on, but not exactly what was said."***

QLR: ***"Is the reason there is not a clear account because it did not happen?***

Mother: ***No. It happened."***

Observation 43

Ultimately, the judge was unable to make findings relating to allegations where it was primarily the mother's testimony against the father's. The only allegations found were those where the judge thought there was credible third-party evidence, or where there were recordings of messages sent by the father that incontrovertibly evidenced abuse. The case demonstrates the limitations of the adversarial process in domestic abuse cases where much of the abuse is unwitnessed or witnessed only by the children. The QLR was able to draw on established techniques for undermining the veracity of the complainant's account – pointing to differences in recollection relating to the timing and other details of events. These inconsistencies may be a product of trauma, which is often poorly understood.[58] The mother pushed back on these perceived 'inconsistencies', and while the judge concluded the mother was "not lying overall", she criticised the mother's lawyer for not establishing a chronology of events in examination in chief, which had left the impression that there were "problems with the mother's recall". Although the mother had representation, the judge's observation suggested it had not been the most effective, which supports what some mothers said in focus groups about their lawyers, as discussed previously.

At the other end of the spectrum, the four-hour FFH observed did not include potentially relevant information as it dealt with only two specific 'incidents', while other evidence of a pattern of domestic abuse was dismissed as not part of the facts in issue. The judge indicated that the FFH was held in order to ensure that the matter would not come back to court; however, the exclusion of elements that may have demonstrated a pattern of domestic abuse meant that the court would not receive a full understanding of the welfare risks to the child or, potentially, prevent a return to court.

4.2.3.4 The outcomes of fact-finding hearings and subsequent orders

Although FFH hearings are rare, they are high stakes in terms of the outcomes. The binary nature of findings was frequently commented on by professionals. This is a product of the adversarial system: if the court finds allegations proven, then the case proceeds on the basis of those findings; if it finds only some of the allegations proven, then it proceeds on the basis that only those specific allegations are true; if it finds none of the allegations proven,

then it proceeds on the basis that the alleged abuse has not occurred and there is no risk to the child. The onus is on the party making allegations to prove their case on the balance of probabilities, and as discussed above, there are many factors that render the playing field distinctly uneven.

The outcomes of the majority of FFHs in the case file sample (7/12) were that some of the allegations were substantiated. In three cases, all of the allegations were substantiated, while in two, no findings were made. In four cases, cross-allegations were also substantiated. Only nine of the 12 fact-finding cases had a judgment on file, and only eight had a schedule of findings attached to the court's order, as required by PD12J.

Following FFHs, interim orders were made for the child or children to live with the mother in almost all cases; however, the interim time with orders made were very varied. In one case where all of the allegations were substantiated, there was nevertheless an order made for contact supervised by a family member, contrary to the stipulations of PD12J. Where some of the allegations were found proven, the orders ranged from indirect contact to unsupervised daytime contact. And in one case where none of the allegations were found, there was still an order for contact to be supervised at a contact centre. These orders are not necessarily inconsistent with the findings on domestic abuse, because they would depend on the particular findings made and/or other welfare risks to the child. But they do raise questions about the correct application of PD12J. Of particular concern was the fact that a section 7 report was ordered following the FFH in only seven of the 12 cases. There was no section 7 report ordered, for example, in either the case in which unsupervised daytime contact was ordered or the case in which indirect contact was ordered following partial findings. Neither was an expert risk assessment or psychological assessment ordered in any of the cases. This is despite the fact that the need for Cafcass or expert input on future risk and welfare following findings of fact has been reiterated in several decisions by the High Court and Court of Appeal.[59]

4.2.3.5 The consequences of not having a fact-finding hearing

The binary nature of the (non-) finding of facts also applies in relation to allegations where no FFH is held. Judges noted that the decision not to hold an FFH is conclusive in itself.

> ***"So you can't proceed on the basis that they might be true or they're probably true, they've either happened or they haven't. If you decide not to have a fact find and there's no other evidence, then they're treated as not having happened, so you ought to put them out of your mind, absolutely."***
>
> **Judge, Interview 31**

It was clear that some mothers did not realise that if they 'chose' (or were advised or pressured) not to raise or pursue allegations early in proceedings or decided against taking the allegations to an FFH, they were then precluded from reintroducing the issues later in the proceedings. The fact that domestic abuse would not be taken into account at all came

as a shock. In Observation 51, for example, the LIP mother said that she had not pursued allegations of domestic abuse because she wanted to be "child focused", but when her allegations of child abuse by the father were not found, she tried to reintroduce the domestic abuse and was stopped.

> **Mother:** ***"For many years, I've had to move and move, and he will stalk me again. I'm close to where the school is and I don't want him stalking me …"***
>
> **Judge:** ***"I'll stop you there…I have to say no findings have been made and no allegations made…you are stating them as a fact, but they are not a fact."***
>
> **Mother:** ***"That's because I didn't talk about it at the hearing. I didn't want to open that can of worms, I wanted to focus on the child."***
>
> **Judge:** ***"The court gave you lots of opportunity to do this and you said you didn't want to raise this."***
>
> **Mother:** ***"I didn't know this – I didn't know I couldn't bring this up again."***
>
> **Judge:** ***"This was discussed on numerous times and written on the orders sent to you."***
>
> **Mother:** ***"I didn't know the implication of this."***

At the same time, it was clear to the observers that the mother was extremely fearful of the father, and that the father was bullying and intimidating her in the courtroom. Refusing to entertain her allegations of abuse may have been technically correct, but it was unlikely to result in orders that were safe or sustainable for the child or the mother.

Similarly, in Observation 83, an FFH had been scheduled on the mother's allegation that the father had raped her, but once the concurrent criminal prosecution for rape was dropped, the mother's lawyer indicated that she did not wish to pursue the FFH. The judge was concerned to ensure that the mother understood the consequences of this decision, impressing on her that she would not be able to bring up the allegations again at a later stage, or talk about them to the section 7 reporter, who would prepare the report on the basis that the alleged rape did not occur.

The qualitative data on the operation of the adversarial process provides further explanations as to how domestic abuse allegations come to be filtered out of child arrangements cases, why there are so few FFHs and why the outcomes of fact-finding are so limited. Whether or not they were represented, survivors said that they had not been able to present their case effectively, either to prove abuse or to argue its relevance to the court's orders. Adversarialism intersects with the pro-contact culture to minimise abuse and exclude it from consideration. The situation is compounded by ongoing resource limitations, as discussed in next section.

4.3 Resource limitations

Lack of resources throughout the system was a strong theme emerging from both the observations and interviews. As one judge succinctly put it: "Resources are always a key problem" (Judge, Interview 10). Resource issues raised ranged from limited judicial and Cafcass resources, to the under-resourcing of the QLR scheme, and the unavailability or limited availability of services to address safety concerns, such as supervised contact centres and Domestic Abuse Perpetrator Programmes (DAPPs).

4.3.1 Judicial resources

When probed about the resource factors that influence case progression and outcomes, judges and magistrates were clear that lack of court time and associated delays in cases are significant. One judge spoke about the pressure to do things quickly rather than properly in these terms:

> ***"No one says, 'Oh, that was a good outcome to that case. I didn't think you'd be able to, you know, achieve that.' ...Everyone says, 'Why did that case take 50 weeks? ...Get them off quicker, and with less hearings'."***
>
> **Judge, Interview 25**

In the observations, it was not uncommon for judges and legal advisers to be juggling multiple cases in the list and for other professionals, particularly Cafcass FCAs, to be double booked. Judges and legal advisers were seen not having enough time to familiarise themselves with the details of the case file before hearing, which on occasion led to misunderstandings. In Observation 15, for example, the legal adviser had not had time to read the file before the hearing and did not realise that the mother was appearing remotely. Not only was the hearing ineffective, but unfair adverse inferences were also drawn about the mother not being present, although this had been previously arranged as a special measure. In Observation 79, the legal adviser told the researchers she had not had time to fully read the papers prior to the hearing and had only skimmed the section 7 report. The mother was applying for a prohibited steps order (PSO), but the legal adviser did not know this and was alerted by the magistrates.

In Observation 74, the judge was handed the father's eight-page statement just before the hearing and had no time to read it. He said that this was not uncommon in a fast-paced court list, where there was no 'down time' for preparation. A judge made the following observation about identifying and responding to domestic abuse:

> ***"It can sometimes be really hard to drill down into what those issues are and obviously if they're not represented and obviously if you are, you know, in a very busy list, and you've only got a certain amount of time to deal with each case ... I think sometimes that leads to delay in the longer term because these issues aren't properly flushed out until later, and then you sort of, you might even have***

a situation where at a FHDRA, if you've got all unrepresented parties, these sort of really serious allegations aren't properly made or properly kind of argued until they actually speak to the section 7 reporter …"

Judge, Interview 30

Another judge said that he was sitting in a case that afternoon that had been issued three months ago and been through gatekeeping but he had not had time to look at it yet. He continued:

"Delay is a big problem. If you've got a potential fact-finding hearing, then the delay is huge. Because you've got the first stage of the filter hearing, you've then got to list it, probably for two or three days. You've got the representation problem … But if you're ordering police disclosure … you're looking at, at least 8, 10 weeks, probably longer actually."

Judge, Interview 23

Limited judicial resources can also impact on judicial continuity, with hearings being listed before any available judge to avoid further delay, at the expense of maintaining consistency for the parties. Judicial continuity is particularly important in domestic abuse cases in obviating the need for a survivor of abuse to tell their story several times over, and in enabling the judicial officer to become familiar with the case and, hence, to be better placed to identify abusive behaviour by a party. PD12J recognises the desirability of judicial continuity in cases involving domestic abuse allegations, although it is only mandated between fact-finding and subsequent hearings (which, as the data shows, occur relatively rarely). This was also a key recommendation from the focus groups – the survivors who participated indicated that they would have liked to have greater judicial consistency, which would help with familiarity with their case and might enable professionals to see the patterns of behaviour more clearly.

In the file sample, 26% of cases involved one hearing or less, and so the question of judicial continuity did not arise. In the three-quarters of cases that did have more than one hearing, only 21% had judicial continuity throughout the case. A further 16% had partial continuity, leaving the parties in 63% of cases appearing before a different judge or legal adviser each time they were in court.[60] Cases before judges were more likely to have continuity than those before magistrates.[61] At one of the court sites, judicial discontinuity was particularly evident: only one case with more than one hearing appeared before the same judge throughout.

4.3.2 Cafcass resources

Judicial interviewees commonly observed that Cafcass appeared to be operating under significant resource pressure. Cafcass interviewees said that they thought their Work to First Hearing teams did a good job in identifying domestic abuse in safeguarding interviews, despite the interviews being time pressured, and felt they were unlikely to miss issues of domestic abuse, although the quantitative findings above suggest otherwise. Magistrates frequently said that they thought Cafcass was working with insufficient resources, and this was a particular concern for them because of their heavy reliance on their input.

> ***"We tend to trust what Cafcass says; the general thing is if you go against what Cafcass is recommending, you need to have really good reasons to do that. But you do have to read them carefully, and sometimes you don't agree because it, you know, it just doesn't feel right what they're saying. And they're so overworked. They're just so incredibly overworked that sometimes it feels really detailed, and sometimes it feels rushed, so you have to take that into consideration."***
>
> **Magistrate, Interview 17**

Lack of Cafcass resource was also commented on by judges.

> ***"... the volume of cases has become a major problem. And certainly, in our area it's because Cafcass are not doing FHDRAs and should be ... at the end of the day, it's a resource problem."***
>
> **Judge, Interview 23**

Although most of the judges and magistrates interviewed said that they normally had the results of safeguarding enquiries at the FHDRA, this was not a universal experience. In the observed cases, Cafcass had not always filed safeguarding letters in time for the FHDRA, and this sometimes resulted in delays because the court were, understandably, not confident to proceed without this information. In some instances, Cafcass may not have completed safeguarding enquiries due to difficulty in contacting the parents, but there were also cases where it appeared that Cafcass and the courts were trying to limit the amount of time Cafcass had to devote to safeguarding enquiries and that resourcing was at least part of the issue. In Observation 5, for example, the mother had made an application for a live with order, but at the FHDRA there was no response from the father because Cafcass had not had time to do safeguarding checks. The mother was alleging harassment by the father's new partner and the court was considering ordering enhanced checks, but Cafcass said that they did not think it would be a good use of resources as the mother's application may be motivated by jealousy. The legal adviser and Cafcass agreed that domestic abuse was being raised due to the mother's "anger" at the father "prioritising his new family". The stereotype of 'jealous mother' (observed in other cases) was deployed to explain why domestic abuse allegations were not worthy of fuller investigation – demonstrating an overlap between lack of resources and minimisation of abuse. In Observation 18, the legal adviser to the magistrates told them she thought it would be a "waste of resources" to get a section 7 report, because "it appears the mother will agree to a slow build-up of contact". The case was adjourned for a conciliation hearing, suggesting the primacy given to the pro-contact culture and saving resources.

There were several other examples in the observed cases of progress being delayed on the day of the hearing due to Cafcass not being ready to contribute, sometimes due to the FCA appearing in multiple cases on the same day. In Observation 50, the legal adviser commented that final hearings often take place without Cafcass because the FCA is either double-booked or otherwise not available. Double-booking was evident in Observation 59; the start of the case was delayed by nearly 1.5 hours as the judge wanted Cafcass to speak to both parties and the Cafcass officer was dealing with another case. The start of Observation 37 was delayed because of double-booking of Cafcass and because the father had been sent to the wrong court. In

Observation 26, the magistrates were keen to avoid a contested hearing because there would be a four-month delay, which they said would make the process "difficult" as most of the information will be "historical". The magistrates indicated that they would be prepared to accept a verbal update from Cafcass if they did not have the resources to do an updating report for the final hearing. Sometimes, judges expressed frustration with the inability to progress cases because of delays in getting reports from Cafcass. For example, in Observation 93, the mother was applying for the father's parental responsibility to be removed because of child sexual abuse convictions. The judge was sympathetic and was openly critical of delays in getting input from Cafcass.

4.3.3 The Qualified Legal Representative scheme

As noted in the introduction, the Domestic Abuse Act 2021 empowered the court to prohibit direct cross-examination of survivors by perpetrators who are litigants in person, and to prevent survivors who are litigants in person being compelled to directly cross-examine perpetrators, and instead to appoint a qualified legal representative to conduct cross-examination on the relevant party's behalf. To operationalise this provision, the Ministry of Justice (MoJ) instituted a scheme for the appointment of qualified legal representatives (QLRs) for the specific and limited purpose of conducting cross-examination in these circumstances. The scheme commenced on 21 July 2022 and applies to cases issued after the date of commencement.[62] More than two-thirds (70%) of the cases in our file sample (209) commenced after that date. But since cases involving a fact-finding and/or final hearing tend to be longer running, it turned out that only around one third of the cases that involved such hearings in the file sample were eligible for the scheme (n=19/54: 35%). We were unable to determine the proportion of cases in the observation sample to which the QLR scheme applied.

In the time period covered by the research, there were significant resource issues impacting on the rollout of the QLR scheme for eligible cases, including the limited availability of training and the perceived unattractiveness of appointments due to low fees and inability to claim travel expenses.[63] It was widely acknowledged by the judiciary in this study that there was an undersupply of QLRs available to take cases. Judges frequently commented on the difficulties of getting a QLR and pointed to the fact that the fee structure was not particularly attractive.[64]

The fact that we saw relatively few QLRs in our observations and files may be partly attributable to this, although a large part of the explanation must relate to the ineligibility of cases that commenced before the scheme came into effect. Of the 17 fact-finding and final hearings we observed, we saw three QLRs in two of the courts, with no QLRs at one of the court sites. All were appointed for the LIP father. In one of these cases (Observation 13), the mother was also a LIP but did not have a QLR acting on her behalf, a factor about which the judge expressed some concern. While the mother was cross-examined by the father's QLR, the mother declined to cross-examine the father at all. And since the QLR's role was only to cross-examine the mother, the father was left to cross-examine the Cafcass FCA by himself. The judge noted the process was unsatisfactory for all concerned and a waste of resources, because a cross-examination that could have been done effectively by a lawyer in a short amount of time was done ineffectively by the father over a longer period.

In the file sample, there were a total of 54 fact-finding and final hearings in 52 cases (two cases involved both types of hearings), but as noted above, only 19 of these were eligible for the QLR scheme. Of these, 11 involved at least one LIP, but there was evidence of the appointment of a QLR in only two files at one court – one fact-finding hearing and one final hearing. In both cases, the QLR was appointed for the LIP father. There were no cases with evidence of a QLR being appointed for a LIP mother. However, the case files were not a reliable source of evidence on QLR appointments. Administrative paperwork relating to QLR appointments was not attached to the relevant files. It was only possible to discern the presence of a QLR if it was mentioned in a written judgment, and written judgments were provided in fewer than half of the hearings (24/54). In the remaining cases presumably an ex tempore judgment was delivered, which was not recorded on the file.

In the absence of a QLR, there were two alternatives available: either the judge or legal adviser took over the questioning of or on behalf of the vulnerable party, or cross-examination was avoided altogether. As explained by one of the judges interviewed:

> ***"... if for whatever reason [a QLR appointment is] refused or we can't get one, then we revert to that good old fashioned thing that I hate the most, which is the judge asks the questions because there is no other option. I've adjourned for lack of a QLR because I've ordered it and then it's not been actioned. Because I, you know, I'd much rather have a QLR than have to do it myself."***
>
> **Judge, Interview 12**

In the case files, there was evidence of the judge taking over the questioning in the absence of a QLR in one FFH and three final hearings, although again, the files were not a reliable source of data on this point. In 19 of the 29 cases involving an FFH or final hearing with at least one LIP, there was no indication on the file as to whether cross-examination occurred and if so, how it was managed.

In our observation sample, we did not see any cases in which the judge took over questioning in the absence of a QLR. Rather, the predominant approach we observed was for the judge or magistrates to elicit evidence from the parties inquisitorially, asking questions of each of the parties in turn. In one case with a single LIP, the magistrates heard submissions from the mother's solicitor and took an inquisitorial approach towards the LIP father. This process was entirely controlled by the bench, with parties not given the opportunity to suggest questions to be put to the other party. The same was observed in other cases where evidence was elicited by the court without cross-examination. While this approach avoids both abusive cross-examination and awkwardness for the judge, and is undoubtedly more efficient in the context of a system plagued with problems of delay and backlogs, principles of procedural justice suggest that the parties should always be given the opportunity both to add anything further that they want to say to the judge, and to suggest any questions that they would like the judge to ask of the other party.

4.3.4 Supervised contact services

Another resource issue that was commonly raised by professionals was the lack of contact centres, particularly for fully supervised contact, which the judiciary noted was not an approach that could be adopted long term. Cafcass interviewees pointed to the difficulty of recommending supervised contact at a contact centre.

> ***"... it entails a cost ... a parent would need to commit to paying that and financially be able to manage that for a long period of time."***
>
> **Cafcass, Interview 13**

> ***"There aren't many supervised settings and supervised sessions are limited ... We've got centres locally that offer supported sessions where it's a lot more informal...but it's not as high level as supervised."***
>
> **Cafcass, Interview 11**

Judges also highlighted cost and availability as barriers to supervised contact.

> ***"You will often have a case which is crying out for supervised contact...it would build up the trust ... but there isn't the facility ... and generally, these people can't afford to fund it ... it's like £75 an hour here and upwards of that, then more if you want a report."***
>
> **Judge, Interview 30**

In Observation 4, the judge was keen to move to supervised contact at a contact centre because the child had not seen his father for almost a year, but neither party could afford to pay for it; the father was unemployed and suffering significant poor mental health and the mother was in low-paid work. It was unclear how this dilemma was going to be resolved.

In addition to cost barriers, there could also be long waiting lists to find a place, particularly at weekends.

> ***"Where it's at a contact centre, often they're full and you can't get contact for a long period of time, and it costs. So that can be very difficult."***
>
> **Magistrate, Interview 17**

Lack of availability of supervised contact resulted in some judges and magistrates making decisions that they said that they would rather not have made, or simply yielding to pragmatism.

> ***"There's been something recently where they've been trying to access some supervised contact but couldn't, so when they came back, when they were supposed to have been reported on how they were getting on, it was agreed that they could just go to supported contact ... at least it was a halfway house."***
>
> **Magistrate, Interview 15**

Arguably, a 'halfway house' is not satisfactory if the original decision was that supervision was required – nothing had changed between then and the later decision to lower the risk to the child. It can be seen how lack of resources may contribute to unsafe orders.

4.3.5 Domestic Abuse Perpetrator Programmes

Another resource issue raised by Cafcass, judges and magistrates was the lack of appropriate Domestic Abuse Perpetrator Programmes (DAPPs). Cafcass interviewees said that they were unable to recommend accredited perpetrator courses as these were no longer commissioned.

> ***"I think it is a gap … We used to be able to recommend it and commission it, but we're not doing that now … they were run by accredited services and there were very intensive, structured courses which looked at domestic abuse, the impact on children, changes in behaviour. [They were] quite lengthy, like a six-month programme, not just a one-off session, and also we'd get feedback from the provider … a final report about if they felt that the person had made changes, if there's been an impact from their learning, but at the moment we can't recommend that because we haven't got it."***
>
> **Cafcass, Interview 11**

The recognised need to improve the performance of DAPPs led the Harm Panel to recommend a review of DAPPs to ensure that they were effectively focused on reducing harm for children and families affected by domestic abuse.[65] While a review was promised at the time Cafcass withdrew from commissioning DAPPs in 2022,[66] there appears to have been no progress from the Ministry of Justice on improved provision since then. Cafcass interviewees commented that the absence of commissioned programmes left them in a weak position when preparing section 7 reports and having to "unpick" whether the perpetrator had genuinely addressed concerns about domestic abuse and "done the work to improve themselves." (Cafcass, Interview 11).

Although commissioned DAPPs were never available in Wales, the withdrawal of commissioning in England was seen as a significant loss by judges and magistrates. As one judge noted, if you make "horrendous findings" then you need to be able to send the perpetrator on an appropriate course, but:

> ***"We can't send people on domestic violence perpetrator courses run by Cafcass, those have gone. It's just a hotch-potch of online courses or some local charity ones. So quite often I think it can be useful to have a course dealing with, like loss of control and anger, things like triggers, treatments and stuff like that. But we're not thinking about it because we're not going to get one, [we've] … completely got out of the mindset of doing it … there's just nothing really, and that's really quite difficult."***
>
> **Judge, Interview 31**

This judge did acknowledge that DAPPs were not effective in all cases:

> ***"Not that perpetrator courses were a panacea for all the evils in the case, they weren't. I've dealt with cases where people have been on courses and they've been back again and up to their old tricks. I can think in one case where he had been on it, and he was just as violent and threatening as beforehand. I think it's a mistake to think that it always works."***
>
> **Judge, Interview 31**

In summary, resource pressures may lead to safeguarding issues either not being fully explored or being completely missed. The QLR scheme was intended to address one of the more traumatic consequences of adversarialism for survivors of domestic abuse (cross examination by or of the perpetrator). However, this scheme was perceived to be under-resourced, and while other means were being adopted to avoid direct cross-examination in the absence of QLRs, those stop-gaps could be problematic in other ways. The lack of accredited and funded perpetrator programmes in combination with the pro-contact culture means that contact is ordered without any interventions to reduce the risk of future abuse.

4.4 Silo working

It has long been observed that there is a lack of a joined-up approach to domestic abuse in cases where there might be overlapping civil, family and criminal proceedings.[67] The Harm Panel received submissions about the lack of sharing of information and professionals taking different approaches in different parts of the legal system.

Around two-thirds of cases in the file sample included evidence of some kind of previous or concurrent criminal investigation or court proceedings involving the family, as shown in the following table:

Table 3: Types of previous/concurrent proceedings in the case file sample

Type of proceedings	Frequency	%
Criminal charges for domestic abuse	27	9%
Police investigation - No Further Action (NFA)	92	31%
Public law children	16	5%
Family Law Act 1996	40	13%
Financial remedies	4	1%

In one court, there was a higher proportion of decisions to take no further action (NFAs) following police investigation (40%), and a correspondingly lower proportion of criminal charges for domestic abuse (6%), pointing to local variations in police practice. There was also a much lower proportion of applications for non-molestation orders under the Family Law Act 1996 in this court (6%).

4.4.1 Criminal proceedings

Survivors and professionals both talked about the consequences of multiple proceedings that are often overlapping but disconnected. In one of the focus groups, a survivor who had bail conditions preventing contact said that the judge indicated at a directions hearing that they would take the child's views into consideration and, if the child said that they wanted contact, they would order it. This was said to have resulted in the father trying to contact the child in breach of bail conditions. As the mother explained:

> ***"I was trying to advocate for my son. He didn't want contact with him, he doesn't want contact now and he's suffering with trauma … yet the judge says at the directional hearing, 'Yeah, he can have contact if he wants to.' So, he [the perpetrator] took that to say to try and initiate contact … he's still on bail, if [child] was to speak to him at all … he could be arrested because he's breached his bail conditions. So, it's like the judge hasn't even taken into account those conditions."***
>
> **Survivor, Focus Group 3**

Being part of multiple proceedings creates additional burdens for the survivor. For example, survivors said that they were sometimes waiting for criminal cases to progress at the same time as going through the family courts and the prospect of giving evidence twice was doubly traumatic, especially when they felt that they were not being protected adequately or taken seriously in either court.

> ***"I had not only a family case, I had a criminal one as well on top of it. And he was using everything. He was using my mental health, he used what happened to me as a teenager – I was sexually abused. He said I was unfit. He said I was an alcoholic. And the more it went on, it went on for a gruelling year or two, the more he was doing. And they would just believe, it felt like they believed him …"***
>
> **Survivor, Focus Group 2**

Survivors also said that police evidence did not always help them when the case came into the family court.

> ***"I had cameras in the house, so all the video evidence was there because the police put them there and even the police statements, they were all just chucked out. And they let him say his piece – 'Oh I've never hit a woman in my life, I'm a victim, I'm disabled, she's schizophrenic' – I'm not schizophrenic by the way…So my barrister switched off her mic and said, 'Come on, we may as well just go home because we know the outcome'."***
>
> **Survivor, Focus Group 2**

When judges were asked about the value that criminal prosecutions could bring to their decision making in child arrangements cases, they said that ongoing criminal cases were not always helpful for the family courts, notably due to delays in criminal case progression. Judges referred to backlogs in the criminal courts and said that they were unable to wait for criminal trials and possible convictions to come through.

> ***"If there is a serious police investigation going on, you have to be aware of the fact and that the current state of the criminal justice system means that is going to take an absolute age. We can't just, well, wait to see what happens, which years ago you could."***
>
> **Judge, Interview 18**

Because judges were unable to wait for the outcome of criminal proceedings, they said that this placed them under pressure to make findings of fact in the family courts.

> ***"I think the family courts are dealing with activity which is criminal – or potentially criminal – far sooner than it used to and far [sooner] than the criminal courts themselves … I've got, for example, a case where I found that the father has raped the mother on two occasions … and that would have been 2017 … the police have only made the application for disclosure this week, and I made those findings in November last year."***
>
> **Judge, Interview 10**

If a prosecution is ongoing, finding out what is happening in a criminal investigation is a resource issue. If there is to be police disclosure, normally, it must be paid for, and there may be transcription and redaction costs involved.

> ***"We have difficulties with the parties getting their hands on police disclosure. We have difficulties with them, for example getting transcripts of ABE [Achieving Best Evidence] interviews or transcripts of audio recorded interviews. I mean, I would say with the ABE, you can actually watch it, but sometimes things are not clear, so we need a transcript. So, again, it's all cost."***
>
> **Judge, Interview 18**

Cost can be a barrier to police disclosure if it cannot be met by the parties or on a legally aided certificate. In Observation 89, the judge was able to order police disclosure on the mother's legal aid certificate. The father was unemployed, a litigant in person, and on bail for assault and coercive control of his new partner. The judge commented that the mother had to give him airtime in court (despite being clearly upset and leaving early), otherwise his "aggressiveness might escalate further". Where the mother is not legally aided, judges spoke of having to rely on the goodwill of the police to keep them up to date. One judge said that, provided he did not "go to the well too often", the police would provide disclosure without charge in appropriate cases (Judge, Interview 18).

Decisions made in criminal cases did not always help survivors, particularly those who had withdrawn their complaints or been told by the police or prosecution that their cases were not going to proceed. As noted in relation to FFHs, this was seen in Observation 83, where an allegation of rape was discontinued in criminal proceedings, which impacted on the mother's position in the family court. There was frustration expressed by survivors about lack of police action being taken as an indicator in the family courts that domestic abuse either had not happened or was not relevant to child arrangements.

> ***"They wouldn't accept my police reports because I hadn't followed through with them. The police would always say 'It's not worth it, you've got no video evidence'."***
>
> **Survivor, Focus Group 4**

Survivors felt that police and prosecutorial decisions not to prosecute had left them in a disadvantaged position in the family courts.

> ***"When my ex-partner was on bail for assault, I fled … because he lived round the corner from me … The judge … said, 'You think you can do whatever you want' … And I was like, I've literally, I've fled for my safety and … you don't see it as abuse because the police have dropped it two days before."***
>
> **Survivor, Focus Group 5**

However, she said that the police had told her they believed her and had only not proceeded because of the criminal standard of proof, not because the assault had not happened.

It was common in observed cases to hear fathers argue that there was no domestic abuse because the police had taken no further action ('NFA-ed') in a complaint against them. It was good practice for judges to refute this contention, as in Observation 7.

> **Judge:** ***"My understanding is that the police have released you from bail, but the matter is still under investigation."***
>
> **Father:** ***"I received another letter a couple of weeks ago saying the matters have been closed."***
>
> **Judge:** ***"I'm looking at a solicitor letter saying the investigation is ongoing. The family court and criminal courts have different standards of proof … we decide on the balance of probabilities … it doesn't matter that the case has been NFA-ed."***

Where there are criminal convictions, this can be persuasive for the family courts. For example, in Observation 78, the father had a long history of domestic abuse against multiple partners and there was police evidence, including information obtained by the mother through the Domestic Violence Disclosure Scheme. The father was not engaging with the process, so the

judge finalised a child arrangements order for no contact and a specific issue order giving the mother permission to take the child abroad, while keeping the details of travel arrangements confidential. Had the father chosen to engage with the process, it is unclear what would have happened, but in his absence the criminal convictions carried weight.

The observations suggested, however, that although Cafcass and judges said that criminal convictions would result in domestic abuse being taking seriously, this was not always the case. In Observation 53, the alleged domestic abuse included punching, hair pulling, and dragging the mother at knife point, resulting in injuries including a broken nose. The severity of the alleged physical abuse was such that the judge said they were not prepared to make a final order without an FFH and section 7 report. The judge indicated that police disclosure in relation to the physical assaults would be required for the FFH and some sort of Scott Schedule. However, the judge then ordered interim contact supervised by members of the father's family, without examining whether that would be safe, and contrary to PD12J.[68]

In interviews, judges and magistrates indicated that generally they would be willing to order some sort of interim direct contact pending a final order in most cases. The pro-contact culture overrides waiting to obtain evidence from the criminal justice process to inform the welfare assessment about whether contact will be safe. In Observation 36, the father had convictions for drink driving and the mother raised concerns about him driving under the influence with the child in the car. The child had also sustained injuries while in the father's care, which he said were "self-inflicted". When the mother's legal representative raised verbal abuse at the contact centre and the father sending belittling communications to the mother, the judge asked: "Why is this relevant?", so the evidence from the criminal process was ignored. The police had previously been called in relation to an alleged assault on the mother, but the judge treated this as 'historic', also dismissing independent evidence from the school. This case demonstrates how silo working can interact with the pro-contact culture to the extent that, even when there is knowledge of concurrent or previous criminal proceedings, it is minimised or ignored.

4.4.2 Non-molestation orders

The perennial suspicion that mothers apply for non-molestation orders (NMOs) to try to gain advantage in child arrangements proceedings was voiced by some of the professionals interviewed for this research.[69] In particular, parties were suspected of making NMO applications strategically to unlock legal aid.

> ***"I think quite a lot of that is down to the legal aid rules … I think there's a clear incentive there for people to make allegations … to throw abuse onto the table pretty early actually these days."***
>
> **Magistrate, Interview 21**

While professionals said that this was sometimes being done by mothers, it was also raised as a possible explanation of increasingly high levels of counter allegations made by fathers. Magistrate 21 continued:

> ***"You do get fathers putting in an application for contact … and they attach with it a C1A form alleging abuse as well. And sometimes we're getting [the father] coming into court with special measures … and you find out later that the wife's gone to a refuge … you think, hold on, how did this come about?"***

While judges said that fathers could be disadvantaged by previous findings made against them in NMO proceedings, this did not always appear to be the case. For example, in Observation 24 there was a contested hearing in relation to two children, the younger of whom had allegedly been assaulted by the father. The father denied domestic abuse and was angrily asserting that referral to a MARAC was being treated as 'evidence' of domestic abuse. The magistrates assured him it was not, which appeared genuine given (as noted earlier) they did not seem to understand what a MARAC was. The magistrates and their legal adviser also appeared to be ignoring evidence that could have been relevant from a prior contested FFH for an NMO as this was not looked at. This evidence was not disclosed or analysed as the magistrates said that they just wanted to be 'child focused'. It is possible that, had they considered evidence from the NMO, they may not have proceeded straight to ordering interim overnight contact, albeit the pro-contact culture may have nonetheless overridden domestic abuse findings.

Just as the existence of an NMO was not always seen as relevant to child arrangements proceedings, the existence of child arrangements proceedings was not always seen as relevant by the courts in deciding Family Law Act applications. The observations included a handful of cases in two of the courts where mothers were applying for an NMO in the context of concurrent or previous child arrangements proceedings. In Observation 71, for example, the child arrangements case had been concluded with contact supervised by the mother's family. The mother was applying for an NMO because the father repeatedly called her at work and had assaulted her on one occasion. While an NMO was made to protect her, the children were not included in it, nor any consideration given to the ongoing risk to them of post-separation domestic abuse.

Observation 96, by contrast, was an example of good practice in relation to overlapping proceedings. In this case, the mother was applying for an NMO because an earlier order granted in child arrangements proceedings had expired. Upon expiration of the order, the mother said that the father was harassing her. The unrepresented father was attempting to use the NMO application to reopen child arrangements. The child arrangements order had provided for indirect contact via letters and gifts and a barring order under section 91(14) for two years. The judge unequivocally told the father that she was not going to allow him to use the NMO application to try to circumvent the barring order and that, if he wanted to reopen the child arrangements case, he would have to make a proper application for leave. At the same time, the judge indicated that 'fishing' into the mother's alleged mental ill health and alleged criminal charges in another jurisdiction was not going to be allowed.

4.4.3 Independent Domestic Violence Advisers

Instances of silo working identified in the Harm Panel report included the family court and Cafcass ignoring other sources of expertise about the families appearing before the court and treating domestic abuse support workers with suspicion. Subsequently, the President of the Family Division issued practice guidance making clear that "any party to family proceedings who is receiving support from an Independent Domestic Violence Adviser [IDVA] or Independent Sexual Violence Adviser [ISVA] has the right to receive that support at any hearing, subject to the court's power to direct otherwise."[70]

In interviews, all judges and magistrates said they would be happy for survivors to have a domestic abuse worker with them in court. And in the focus groups (which were organised and facilitated by support services), an unsurprisingly high proportion of survivors had been accompanied to court by a support worker. However, we saw very few 'others' accompanying the parties in our observation sample, including only five IDVAs or DA support workers (alongside seven interpreters, four friends or family members and two McKenzie Friends). There was similarly a very low number of cases in the file sample in which there was evidence of a survivor being accompanied in court by an IDVA or support worker. Thus, while this particular form of silo working seems to have been overcome in theory, it appears that resource limitations on the capacity of domestic abuse services to provide support for court attendances may impact on its practical effect.

Despite good practice in a few cases where judges showed awareness of overlapping or previous proceedings in other parts of the legal system, the observations, interviews and focus groups suggest that silo working continues to be a significant issue for child arrangements cases and operates as another means by which domestic abuse is minimised and the pro-contact culture prevails.

5 The continuing consequences of structural barriers

The Harm Panel report identified four specific consequences of the structural barriers discussed above: the minimisation of domestic abuse, traumatic court proceedings, the silencing of children's voices and unsafe orders that exposed children and protective parents to continuing harm. These same consequences continued to be evident in the pilot study for the FCRRM.

5.1 The minimisation of domestic abuse

> ***"I actually had a social worker laugh and say, 'Anything over two weeks is classed as historical' … It was just too easy for them to go – 'This is warring parents' … and the judge was like, 'Yeah, I've glanced over it and it just, to me, looks like bickering parents'."***
>
> **Survivor, Focus Group 5**

As this quotation illustrates, domestic abuse may be minimised by reframing it as 'minor', 'historical', 'mutual', 'parental conflict', or a combination of these. The minimisation of abuse was also accompanied by victim blaming in some cases, based on stereotypes of survivors making false allegations, acting out of jealousy or failing to protect children.

5.1.1 Abuse is 'minor'- non-physical

One of the main ways that domestic abuse was framed as 'minor' was if there were no physical assaults and injuries. This is borne out by the quantitative data discussed previously in relation to types of abuse. Survivors commented that they regularly encountered "old fashioned" or "behind the times" attitudes (Survivor, Focus Group 2) that domestic abuse must involve physical violence and bruises. They said that they encountered little understanding of verbal, emotional, psychological or financial abuse and coercive control. The following exchange between survivors from Focus Group 2 is illustrative:

> **Survivor 1:** ***"It's the domestic abuse needs to move from the violent part as well. You don't need bruises and stuff."***
>
> **Survivor 2:** ***"It's not just physical, it's mentally as well. It's harder to prove."***
>
> **Survivor 3:** ***"Coercive control is very hard to prove."***

Survivors across all focus groups said that they felt that non-physical abuse was viewed as unimportant as well as being difficult to prove. One survivor described being repeatedly verbally abused in public, but the father used his first language, which was not English, so it would be understood by the children but not by bystanders and potential witnesses. She said that the courts were unwilling to examine evidence of verbal abuse (including in texts and WhatsApp messages): "They didn't look that there's a pattern" (Survivor, Focus Group 5). Another survivor from the same group agreed, "It's a pattern of behaviour, that's evidence of their character and what they are capable of", but in her experience it was viewed as "historical" (Survivor, Focus Group 5).

In this instance, survivors' views were consistent with what professionals said about the weight they attached to physical abuse in contrast to other types of abuse. One judge said that she had dealt with a case that was a mixture of allegations of physical abuse and coercive and controlling behaviour.

> ***"And at the first hearing, Mum had set out a massive catalogue of allegations, ranging from sort of quite kind of what you might describe as just sinister or unsettling behaviour … to, you know, like physical, real physical, serious physical assaults."***
>
> **Judge, Interview 30**

The hierarchy of seriousness is evident in this quotation: the 'serious' domestic abuse was the physical assaults, whereas the 'sinister or unsettling behaviour' (which might alternatively be described as a pattern of coercive control) was seen as being of marginal relevance.

As the quantitative analysis shows, allegations of physical or sexual abuse were more likely to lead to cases being allocated or re-allocated to a district or circuit judge rather than to the magistrates. For example, in Observation 45, the alleged domestic abuse met a threshold that persuaded the magistrates to question the risk assessment by Cafcass, who were recommending contact supervised by the maternal family, and to refer the case to a district judge.

Verbal and emotional abuse, on the other hand, might be viewed as just the end stages of a 'normal'/non-abusive relationship.

> ***"You have to remember that not all bad behaviour is domestic abuse, is it? It can just be a symptom of a failing relationship."***
>
> **Judge, Interview 31**

The same judge said that they were usually "pretty slow" to order interim contact if there was "proper" abuse, i.e. ongoing physical abuse. Another judge said that physical injuries were harder for judges to ignore or for the perpetrator to "explain away".

> ***"A conviction's the best, obviously, overwhelming evidence from the police, you know, 'We turned up and she was on the floor covered in blood and he was stood over her holding a broken bottle … You say … 'It does look, doesn't it, as if something untoward happened?'"***
>
> **Judge, Interview 25**

These comments suggest that there is a heavy emphasis on physical abuse and injury, and, without that, behaviour may be regarded as non-abusive or 'minor'. While physical abuse might be regarded as more serious, it was generally also thought that the risk of future physical abuse could be easily managed.

> ***"The physical ones, you say, 'So, right, you just have nothing to do with each other'. You know, you can usually, if it's in the children's best interest, you can usually organise something that they can see the other party without having to come into contact, can't you?"***
>
> **Magistrate, Interview 15**

By contrast, in Observation 79, the magistrates made an order for no contact in a case where the father had tried to strangle the mother in public. The public nature of this act was considered to be a particularly compelling factor indicating ongoing risk.

In Observation 50, the mother tried to argue that the father's making his consent to a specific issue order (SIO) conditional on the mother facilitating contact with the paternal family was part of a pattern of coercive and controlling behaviour, but this did not appear to be acknowledged by the magistrates. When the mother asked about a non-molestation order, the magistrates' legal adviser told her that she would have to apply for one separately as there was insufficient evidence for the court to make one of its own motion.

Even when the seriousness of coercive control was recognised, it might still be seen as of less immediate concern. One magistrate said that they thought coercive control was bad for children because it was modelling "unhealthy" relationships.

> ***"That must be a really powerful piece of learning for children, so I think it's always an issue, and where there's violence, then, of course, it's a much bigger issue."***
>
> **Magistrate, Interview 17**

Here, physical violence was potentially relevant to the present, while financial and verbal abuse was something that might impact children having 'good' adult relationships of their own in the (distant) future.

5.1.2 Abuse is "mutual"

In interviews, both magistrates and judges described parties "weaponising the kids" and making mutual or "tit for tat" allegations. One magistrate said that perpetrators of domestic abuse would often try to minimise their behaviour but:

> ***"It does take two in a lot of situations … there are reasons why things happen which stem from the way that people relate to each other … So, I think it's wrong to sort of think whoever sort of waves the flag first is the victim because quite often it's not so simple as that."***
>
> **Magistrate, Interview 21**

In Observation 10, the father had made cross-allegations of domestic abuse, which had resulted in the mother's arrest. The magistrates and their legal adviser regarded the abuse as "mutual", even though Cafcass had flagged potential litigation abuse by the father. In Observation 38, both the mother and father had reported each other to the police, and the judge described the dynamic as "mutually abusive" and Cafcass had recommended contact progressing from supervised in the community to overnight. In Observation 44, the father had previously been convicted of a domestic abuse offence and received a custodial sentence, but the judge was sceptical about the mother's new allegations of abuse, saying he was not convinced that it was "all the father at fault" and the mother had "been violent too" on his

interpretation of the disclosed material relating to the father's conviction. The judge referred to this case as "high conflict" with "weaponising" of domestic abuse allegations.

5.1.3 Reframing as parental conflict

> ***"You've got a tiny child confiding in school, social services … got them raising concerns consistently for many years. You don't then, at the final hour, go, 'Oh this is just warring parents'."***
>
> **Survivor, Focus Group 5**

> ***"It's immediately apparent that you're still emotional, there is a lot of anger and irritation between you and that's leading to things not being child focused."***
>
> **Judge, Observation 8**

Domestic abuse was frequently reframed as 'parental conflict'. 'Parental conflict' was identified in 18% of the safeguarding letters on the court files, and all but one of these cases involved some issue of domestic abuse. 'Parental conflict' was particularly likely to be identified by Cafcass where the safeguarding letter also reported cross-allegations of domestic abuse, suggesting that this was seen as the default category in cases with cross-allegations, rather than attempts being made to identify the primary perpetrator.

Some judges suggested that raising coercive and controlling behaviour was often a good indicator of 'parental conflict' as it was common for the alleged perpetrator to make counter allegations of a similar nature. For example, one judge said:

> ***"I would say there were nearly always some allegations of one party or both of domestic abuse in high conflict cases. Usually coercive controlling behaviour, I'd say, rather than the old-fashioned domestic violence … those allegations are frequent in those high conflict cases."***
>
> **Judge, Interview 31**

Observation 16 was described by the judge as a "high conflict" case where the primary issue in the father's 'live with' application was differences over the religious upbringing of the child. There had previously been an FFH at which allegations of rape had not been found but allegations of psychological abuse had been found proven. Nevertheless, this abuse was not addressed in the final hearing, partly, it seemed, because the mother did not wish to revisit it, and just wanted to focus on the specific issue. This allowed the judge to characterise the parties as argumentative and at war with each other, even though the father's insistence on a traditional Islamic upbringing for their child could have been seen as a further instance of controlling behaviour, and Cafcass had assessed the father as "authoritarian" and controlling, which was also evident from his behaviour in the courtroom.

5.1.4 Other safeguarding issues more important

Other safeguarding issues were identified far less often than domestic abuse in safeguarding letters. The most frequently mentioned other safeguarding issues were parental substance misuse (45%), local authority involvement with the family (37%), father's criminal record (31%), and parental mental health (29%). But quite often in the observed cases, domestic abuse was not seen as being as important as these other issues. For example, in Observation 3, the father was applying for enforcement of a CAO giving him alternate weekend contact and asking for a transfer of residence. The judge chose to focus on the mother's mental health and parenting ability and appeared to be considering a transfer of residence to the father, even though the child had never lived with him. The mother's allegations of domestic abuse were regarded as "historical" and the judge raised the stereotype of the "spurned, jealous woman". No third-party evidence was examined, although there had been both police and local authority involvement. In Observation 66, the focus was similarly placed on the mother's mental health and substance abuse. The judge relied heavily on the father's legal representative to agree suitable supervisors for the mother's contact with the children. The mother was visibly upset and said that she wanted the court to resolve the arrangements as the father would not agree anything due to being controlling. There was a clear power imbalance with the mother being unrepresented and the father's lawyer demonstrating hostility towards her.

Given examples such as the above, it is perhaps unsurprising that many judges said in interviews that fathers would commonly raise the mental health of the mother as a response to allegations of domestic abuse. It suggests that this may be a strategy to deflect, but also it is concerning that judges and magistrates did not always see or consider the link between poor mental health and domestic abuse and trauma. All of these ways of minimising and diminishing the significance of domestic abuse flow from the pro-contact culture and may result in the quick progression of contact despite domestic abuse.

5.2 Retraumatisation through the court process

The private nature of child arrangements proceedings and uncertainty of outcomes left many survivors feeling alone and isolated. One survivor said:

> ***"You feel so on your own, you can't talk to family or friends because on the off chance that someone might say something to someone else."***
>
> **Survivor, Focus Group 4**

Whether they had family and community support or not, all survivors spoke about the retraumatising effects of going through the family justice system. As one said:

> ***"The family court system is harrowing. It takes over your life, you can't think about anything else."***
>
> **Survivor, Focus Group 6**

Others described proceedings as "all consuming" (Survivor, Focus Group 4) and said their lives were "on hold" (Survivor, Focus Group 2) for the duration of the case, including not being able to take up new employment (Male Survivor, Interview).

5.2.1 Effects on mental health

Parties involved in private family law proceedings have higher levels of reported mental health issues than peers in the general population.[71] It is also well known that domestic abuse has detrimental effects on the mental health and wellbeing of survivors of domestic abuse, and that this can be weaponised by perpetrators in legal proceedings.[72] In this study, survivors described the impact of proceedings on their mental health and, in some instances, how that was weaponised. The court process was frequently described by survivors as being the most stressful situation they had ever experienced in their lives. One survivor spoke of not wanting to receive mail because it might be about the case, and her traumatic reaction to case correspondence 'derails everything' (Survivor, Focus Group 7). Many survivors spoke about the stress of court proceedings and, in some cases, having to take time off work due to stress.

> ***"I had a nervous breakdown after – I was off sick for two months. It just broke me."***
> **Survivor, Focus Group 2**

Another survivor who was diagnosed with PTSD and off work for three months, described how her workplace then "just tried their best to get rid of me" (Survivor, Focus Group 6). Poor physical and mental health were commonly spoken about as following on from court proceedings.

> ***"It physically makes you ill … you feel disbelieved. You feel smaller and smaller."***
> **Survivor, Focus Group 4**

Although survivors described the toll of the abuse and proceedings on their mental health, some also noted that they felt that this traumatic response was used against them in the family court.

> ***"Because I admitted to struggling and having mental health problems it was used against me … he's got a better support network at home, so they've given him the live with order based on me having mental health problems."***
> **Survivor, Focus Group 2**

Poor mental health was something that mothers tried to avoid being brought up in court, even to the extent of burying ongoing abuse, because "it's just making me look neurotic" (Survivor, Focus Group 5). From the survivors' accounts, they felt that professionals were unlikely to challenge perpetrators who used their mental ill-health to try to undermine them. However, there were isolated examples where judges were said to have challenged fathers for not considering the impact of their behaviour on the mother's mental health. For example, one survivor, who had different experiences between multiple judges, said:

"My judge last month called the dad out … he said, 'What about mum's mental health? She's looking after two disabled kids 24/7. What are you doing?'"

Survivor, Focus Group 4

5.2.2 Special measures

The Family Procedure Rules Part 3A.2A and Practice Direction 3AA now specify that any person alleging that they are a victim of abuse by another party is automatically deemed to be a vulnerable witness who is entitled to participation directions to enable their effective participation in proceedings. In this area, the case files proved to be incomplete and unreliable. There was relatively scant evidence on the files of requests for special measures, and this was almost exclusively where the relevant box had been ticked on the C100 or C1A form (20% and 21% of files respectively), with a large overlap between them. Requests that may have been received separately by court staff were not attached to files. The most frequent request among the tick-boxes was for a separate waiting area at court, followed by screens and separate entrances, with a smaller number of requests for attendance by video link. There was some variation between courts in the proportion of request made. The files also yielded little insight as to the extent to which requests were implemented.

In our observations, we found that special measures appeared to be routinely available. The courts all had screens, albeit in some courtrooms they were more makeshift than in others. All of the courts also had ways of trying to keep the parties separate while waiting for the case to be called, although some courts could call upon well-appointed, dedicated witness suites while others used more ad hoc methods, such as placing victims in lockable private consultation rooms around the main waiting area, or locating parties on different floors in the same building until their case was called. The courts also appeared well versed in staggering parties' entrances into and exits from the courtroom to ensure the safety of vulnerable parties. Across the observation sample, special measures were employed in 43% of cases, although again with some difference between courts, with provision of special measures ranging from 27% of cases to 53%. In cases we identified as involving domestic abuse, special measures were in place in 53% of cases.

One issue that was not easy to resolve was keeping the parties separate when arriving at court. None of the courts had dedicated separate entrances, although they would sometimes use staff entrances to escort witnesses needing special measures to waiting areas or directly into court. The survivors spoke about how special measures were implemented and entrances and exits were raised as an issue.

"You have to queue up outside and then they're there too, and so like, I have to hide around the corner … you have to go on after the big queue because you're not going to stand next to them."

Survivor, Focus Group 7

In another court, a survivor said that she would have welcomed the court taking control of staged exits.

> ***"They didn't sort of think, 'Oh let's guide him out first' … take ownership of that … I don't want to be walking out of the room with him coming behind me."***
> **Survivor, Focus Group 3**

Most of the judges and magistrates interviewed acknowledged that lack of separate entrances was a flaw in the delivery of special measures.

> ***"It would be nice to have separate entrances … we can have staggered times. It's as good as it gets."***
> **Judge, Interview 31**

> ***"Most people end up coming through the front door, so that can be a problem."***
> **Magistrate, Interview 15**

Survivors indicated that close proximity inside the building was also an issue.

> ***"We were literally sat in the corridor and he was round the corner and I could hear everything he was saying …"***
> **Survivor, Group 3**

The judiciary felt that once the parties were inside the court building, it was generally much easier to keep them separate. Most commented that the ushers were good at getting the parties into separate waiting rooms, or different floors, if needed.

> ***"The ushers, I have observed, will do their best to try and make sure that people do not come into contact with each other."***
> **Magistrate, Interview 16**

In one of the magistrates' courts in the pilot, there was a dedicated special measures usher who was clearly committed and praised by the magistrates for her practice. This particular magistrate said that everyone at their court understood the need for special measures and was compassionate; "Nobody rolls their eyes…and says, 'Why are we doing this?'" (Magistrate, Interview 16). However, this was not the experience of all survivors, some of whom said that they felt neglected or made to feel like they were a nuisance.

> ***"It's like a secondary thought. You feel like it's an inconvenience for them to sort it."***
> **Survivor, Focus Group 4**

One survivor reported that she was put in a small room with no windows, where she sat for seven hours.

> ***"Every two hours or something, someone would pop in to see if I was alright, but I was in this room, knowing he was out there somewhere. I didn't dare to go out or open the door to go to the toilet or to get a drink of water … I felt like I was the one imprisoned in that room, I was petrified."***
>
> **Survivor, Focus Group 3**

Survivors had mixed experiences and feelings on the use of screens in the courtroom. Some survivors reported that not seeing the perpetrator had given them confidence to "talk better" and that screens "are a must" (Survivor, Focus Group 5). Others said that they declined a screen because they wanted to be able to sit with their legal representative, which was not possible when using the screen due to the way it was positioned in the courtroom. Others in this court who used screens commented that being behind the screen without their representative was problematic.

> ***"I couldn't confer with my barrister … by the time you get out of the room [and can confer], it's too late, it's all been said."***
>
> **Survivor, Focus Group 6**

Despite this disadvantage, the survivor was still grateful to have a screen.

The judiciary also expressed scepticism about the effectiveness of screens to reduce fear and trauma. There were frequent comments on the flimsy protection offered.

> ***"If you were setting something up today, you wouldn't say, 'I'll tell you what we'll do to protect this woman who is terrified, she thinks her life may be imperilled … we'll have one of those blue things there [points to screen] … and she can hide behind one side, trembling, and he's on the other side, you know, banging on it or tutting or sighing.'"***
>
> **Judge, Interview 25**

Magistrates agreed that the screens were not necessarily the most effective measure to reduce fear. The logistics of delivering screens were also commented upon by magistrates, given that they are not permanent fixtures and have to be set up by ushers or other court staff.

> ***"They're quite primitive … we have got screens on a trolley … there's a little bit of jiggery pokery to see who can see who."***
>
> **Magistrate, Interview 19**

Magistrates said that if there was a shortage of court ushers, then the legal adviser would step in to set up screens and move court furniture around.

> ***"We are short of court ushers, so quite often the legal advisers have to do all that sort of dancing about."***
>
> **Magistrate, Interview 21**

In court observations, judges would sometimes adapt practice to try to maximise the effectiveness of what they had, for example putting the perpetrator behind the screen so that the survivor could sit with their legal representative. In some cases, the perpetrator would be brought in first and put behind the screen and then the survivor would be brought in. In other cases, though, survivors walked through the court past the perpetrator to get behind the screen. Even more concerningly, observations revealed cases where survivors behind screens were left alone in the courtroom with the other party while the legal adviser or usher went to tell the judge or magistrates that the parties were ready. In Observation 65, the special measures were poorly implemented both inside and outside the courtroom. The mother had no special measures in the waiting area, albeit the usher told her that she could move up to another floor to wait if she wanted. In the courtroom, she was screened and while, technically, not left alone with the father because the father's legal representative was present, was subjected to verbal disparagement by the father while the magistrates and their adviser were out of court for nearly 15 minutes for deliberations. The lawyer did nothing to silence his client, which seemed to be poor practice, but there was a vulnerability left by the decision makers leaving the court without ensuring the survivor would be safe.

The routinisation of special measures (particularly screens, if wanted) should be viewed as definite progress since the Harm Panel report. However, the pilot suggests that there may be some unintended consequences of adapting the process to attempt to reduce trauma and maximise the ability of vulnerable witnesses to give evidence. Despite what some interviewees said, it was widespread during observations to hear professionals, including ushers, legal advisers and the judiciary, negatively commenting on screens being requested as a tactical measure to try to gain an advantage in proceedings. This view was echoed in interviews.

> ***"It's not always clear that it's being asked for on a reasonable basis … I'm very alert to the fact that the parties will try and achieve an advantage … to be able to say that the other party has done something wrong."***
>
> **Judge, Interview 12**

The perception that special measures may be part of game playing, to try to secure an advantage in the adversarial process, was confirmed in observed cases where parties were encouraged to decline special measures to 'evidence' lack of 'hostility'.

In court observations, survivors could be seen to be visibly distressed even when special measures were available and used 'effectively'. Giving evidence from behind a screen may protect the survivor from the direct line of sight of the alleged abuser, but it does little to mitigate against the sense of their presence or the content of questions that are designed to test evidence but are distressing. In focus groups, survivors observed that the existence of special measures does little to reduce the trauma of going through family court and being in the same court building and courtroom as their abuser.

> ***"I could never have imagined how horrific it would be, being in that room with him and knowing that he's there, even though I couldn't see him … it just absolutely broke me to be honest with you … I couldn't think straight, concentrate on what's being said … you basically go into like a freeze response."***
>
> **Survivor, Focus Group 6**

In the five-day FFH (Observation 47), the mother stood throughout her evidence (despite being invited by the judge to sit) and clung to the witness box, visibly distraught. When she had finished giving evidence, she and her IDVA were placed behind a large screen, which effectively hid her from all but the judge and researcher. She was rocking backwards and forwards, pulling at her clothing, and appeared to be experiencing extreme levels of distress throughout the whole process, particularly when the audio recordings of the abuse were being played in court.

5.2.3 Cross-examination

As discussed above, the practice of abusive direct cross-examination appears to have been largely stopped in the courts we observed, whether by appointment of a QLR or other means. Nevertheless, survivors said that they found the questions asked in cross examination difficult because lawyers seemed to lack empathy for their experiences. They acknowledged that the lawyers doing the cross examination are "paid to ask questions" but thought that they were allowed to ask anything.

> ***"He had a barrister, and she was going at me all the time, but when I said to her, 'Have you ever been a victim of domestic violence?' she said 'That's irrelevant' … The judge was defending his barrister and saying 'You can't answer a question with a question' … In the end I said to her – 'You've never walked in my shoes.'"***
>
> **Survivor, Focus Group 2**

5.2.4 Section 91(14) orders

Section 91(14) of the Children Act 1998 allows the court to make orders barring a party from making further applications under the Act for a specified period of time without leave of the court. These orders had traditionally been regarded by the courts as draconian and to be made only in exceptionally rare cases.[73] The Harm Panel recommended that section 91(14) orders should be more readily available to constrain the ability of perpetrators to bring repeated family court applications as a form of ongoing harassment, control and coercion of their former partners. Subsequently, the Domestic Abuse Act 2021 made amendments to the criteria for a section 91(14) order,[74] and the Court of Appeal revised its restrictive case law on the circumstances for making such an order.[75] It might, therefore, be expected that section 91(14) orders would be more prevalent in our observations and case files.

However, section 91(14) was raised in only four cases in our observations. In one of these, the judge made an order of their own motion. In the second, the mother had applied for an order, but it was not dealt with, as the final hearing was adjourned pending investigation of

new allegations. In the third, the three children lived with the father, and a section 91(14) order had been made against the mother. However, one of the older children had run away to live with the mother and she now sought leave to apply for a 'live with' order for that child, which was granted by the court. In a fourth case, discussed previously, a section 91(14) order had been made against the father in child arrangements proceedings, but he now sought a non-molestation order against the mother. The judge was quick to shut down this attempt to circumvent the section 91(14) order.

In the case files, there were 10 applications for section 91(14) orders, and five cases in which the court made an order of its own motion. Eight of the applications were made by mothers, and in one of these cases there was also a cross-application by the father. In one case in which both parties were LIPs, the children's guardian suggested to the court that it make a section 91(14) order. Seven of the 10 applications were granted, including the case in which both parties applied for an order. In the case in which the children's guardian raised the issue, the order was also made against both parties. The making of reciprocal orders raises some concern that section 91(14) may be (re)deployed to restrain parental 'conflict', rather than the court clearly identifying and holding to account the primary perpetrator of abuse and protecting the victim.

In summary, there is only so much that special measures and QLR appointments can do to mitigate trauma, but the qualitative data shows that the implementation of special measures can still be improved in some cases. In this context, there did not seem to have been much consideration given to remote attendance of the alleged perpetrator as a special measure, while the limitations of the court estate (a resource issue) present barriers that could sometimes be addressed more creatively. There is also a need to dispel negative inferences being drawn from the use of special measures. It is encouraging to see courts beginning to make section 91(14) orders of their own motion, but any tendency to make 'mutual' orders once again may serve to minimise the impacts of abuse.

5.3 Silencing of children's voices

> ***"[one of the girls] says 'I don't want to see him, and I don't want him to see my face' … she said to the judge in a letter, 'I am a real person, with real feelings, why don't you listen to me?', and that broke me."***
>
> **Survivor, Focus Group 5**

5.3.1 Establishing wishes and feelings

Many survivors in focus groups expressed their children's and their own dissatisfaction with their interactions with Cafcass, when it came to establishing their children's wishes and feelings.

> ***"I didn't think they listen to kids … I know they were small, the youngest … during the proceedings he got to 4 or 5, and the eldest … he got to like 7 or 8, Cafcass would call***

him into the office, and … he hated anyone asking him questions … he kept saying, 'Why am I being punished?…everyone's forcing me to talk about him and see him' … And Cafcass were saying … 'The words he's using are too large for him to say'. I was like, 'But I wasn't even in the room, how do I know what you're going to ask him?'"

Survivor, Focus Group 3

Survivors said that they did not think Cafcass were able to get to the 'true' wishes and feelings of their children.

"The Cafcass officer, he'd seen them twice in two years. You think you know what my girls want?"

Survivor, Focus Group 5

One of the issues raised was the lack of time that Cafcass spent with children; often they only talked to them for a very short time. This was thought to be totally ineffective in understanding wishes and feelings, especially in the context of lack of trust.

"Even though they do a piece of work, it's not a true picture of what they think. My children came to distrust professionals … all my kids said that they didn't want to see their dad, but they used this thing called parental alienation … the children had their own solicitor in court, I had to represent myself. I felt like the court didn't make a decision based on the children … the children would tell everyone that they didn't want to see him."

Survivor, Focus Group 4

This survivor said that the fact that the children's wishes were dismissed led to them "shutting down" and not disclosing further abuse.

"They were shut down for such a long time because the professionals dismissed what they were saying about not wanting to see dad. They never disclosed, because they didn't feel safe … One of my kids had a book called Human Rights for Children … it says that you have the right not to be tortured, and there's a scary picture of a battered doll. She said 'Mum, please give this to the judge, he'll see this and that will stop dad.'"

Survivor, Focus Group 4

Other survivors spoke about their children not wanting to talk to Cafcass due to negative experiences.

"The children have no trust because everything that they said in confidence to the safeguarding was repeated to dad. Dad twisted and used that for his advantage at court."

Survivor, Focus Group 5

Not all children are able to speak, perhaps because of age, additional needs or severe disabilities.

> ***"My daughter is totally non-verbal … asking them questions isn't a thing. I have to make sure that I am their voice … asking if school and medical can do reports."***
> **Survivor, Focus Group 4**

> ***"They did a video call with him when he was about four or five maybe. I don't think they got much out of that at all because he didn't really engage. They tried like doing some drawings or something, but I just don't think he really understood what it was all about. So yeah, I think it's difficult with children that age."***
> **Survivor, Focus Group 3**

However, it was generally agreed that too little weight was given to the views of teachers and other people who work daily with children and could give them a voice.

> ***"Someone like that, who really knows the kids, who'll know how contact affects them, should be approved."***
> **Survivor, Focus Group 4**

5.3.2 Children's guardians

One of the ways in which children's voices can potentially be magnified in proceedings is through the appointment of a guardian under rule 16.4. It is clear from the quantitative data that the appointment of a guardian in private family law cases is a rarity: a guardian was appointed in only 3% of cases in the file sample (n=9), with almost all of these appointments being in Wales rather than in the English courts. The rarity of guardian appointments was confirmed in interviews with professionals and is consistent with other research.[76] Magistrates said that they were normally wholly reliant on Cafcass for the children's views.

> ***"We're generally happy with the nature of the reports we get from Cafcass and usually they're able to get close enough to the children to establish a fairly reliable view on what their wishes and feelings are. It's not always the case. We had one last week where the child in question was really not wanting to talk to the Cafcass officer, and that may have just been they didn't hit it off, or it may have been the child was hiding or sort of masking true feelings, I'm not sure … it did become an issue in the final hearing a little bit as to whether we'd really got enough to go on."***
> **Magistrate, Interview 21**

Magistrates said they were not aware of cases at their level where guardians were appointed, and that if it was felt necessary to have a guardian then the case would most likely be sent up to a district judge (Magistrate, Interview 15). Reflecting further on this question, the magistrate expressed some disquiet about whether the voices of children were truly heard in private law proceedings.

> ***"You'd rather hope that [after speaking to Cafcass] the children had been heard by then, but as we all know, in family courts, that's not necessarily what happens in real life, is it? … Because, I mean, the times you know you're in the court, you just think, well, does anyone mention the child yet, you know. I've always thought we ought to have a picture of the child up on a screen while we have the hearing to focus minds."***
>
> **Magistrate, Interview 15**

Judges, like magistrates, said that Cafcass were also their main way of establishing the wishes and feelings of children.

> ***"I rarely see children. I will in super rare cases, but one thing I'm not going to ask is the impact of violence on them. So, I am really reliant on the professionals involved, they are my eyes and ears."***
>
> **Judge, Interview 18**

Judges had mixed views about the utility of appointing guardians under rule 16.4, with some expressing the view that their appointment ought to be routine if resources permitted. Others said that they would avoid appointing a guardian due to delays.

> ***"I have a nervousness about ordering a guardian in the same way as I have nervousness about lots of these processes, which is that everything stops. The guardian gets appointed and there's a whole new process. The guardian has their solicitor, there's discussion with the child or children, etcetera, etcetera. So, weeks and weeks and weeks go by of yet more process, during which time, often there's no contact … It is all very costly, very time consuming."***
>
> **Judge, Interview 12**

This judge said that they could only recall ever having appointed a guardian in one or two cases, specifically not involving domestic abuse. They also said that if they were considering appointing experts (for example, due to allegations of alienating behaviours and psychological assessments being required), they would not do that without a guardian appointed. But again, the judge said these types of cases were rare, and in most cases, Cafcass is the 'voice' of the child.

5.3.3 Judges listening to and hearing from children

In focus groups, some survivors reported that when Cafcass had spoken to their children and told the court that the children said they did not want contact, judges had ignored that and ordered contact anyway.

> ***"My boy was saying he didn't want to go, my daughter was reporting things that were just completely ignored but … we were really lucky, we had a really experienced social worker … she fought then to get no contact, but the judge then***

still, after like a month, made my little boy go to the contact centre. And it was horrific – he's got quite complex needs, learning difficulties and autism, so there's no reasonable adjustments made … they would make us sit there for the whole 2 hours in the car while he was visibly screaming, banging his head …"

Survivor, Focus Group 2

A survivor also reported that their child's attempts to communicate with the judge were rebuffed.

"[my daughter] wrote a letter to the judge and the judge would not acknowledge it. She said, 'I am not reading anything' … she's now 10 and she is still saying 'Can I speak to the judge?' … she just wants to have a voice to say 'This is how I feel things should work out' … my daughter can't get heard."

Survivor, Focus Group 5

Some survivors questioned why children did not have a more direct voice in proceedings. One survivor asked what age a child would have to be to speak in court.

"…obviously all children have got rights, but what age is it right for a child to be able to go into court and speak on their own behalf? Because Cafcass is their voice but … I feel like it's still not the kid's voice."

Survivor, Focus Group 2

One judge said they would like to hear more directly from children.

"Children who are very aware and, therefore, fearful, I would very much take their view into account, so long as I don't think that they have been alienated in any way. I would really want to know, well, what do you think you can cope with or what do you feel about it? I love to see children myself … but that doesn't happen often … perhaps three [children] a year or something … older children that is … because if you talk to the young ones, I mean … I couldn't learn anything from the child."

Judge, Interview 29

While being positive about speaking directly with children, this judge sounded a note of caution, of not wanting children "paraded in front of you" and making sure that "it's not that a parent is sort of forcing them into it, really."

Many judges expressed the view that older children will "vote with their feet", and in that situation their views had to be respected because there was little point in ordering contact. For example, Judge 18 said: "If it's a 14-year-old who doesn't want to see my mum or dad… that's probably their genuine wishes and feelings." However, in the observations, there were cases where older children had been ordered to have contact or even live with a parent whom they did not want to see, and the arrangements had broken down. As discussed

previously, one of the cases in which there was a section 91(14) order in place involved a child running away from a father whom they had been ordered to live with (Observation 29). The mother sought leave to apply for an order for the child to live with her and for their passport to be returned. The father was not engaging. While granting the mother leave to apply, the judge told her to give the father one more chance to respond and then he would make an order in his absence.

Observations suggested that, while the age of the child could be important to the weight given to their views, it was not their age that was *most* relevant to whether their wishes and feelings were taken into account. In line with the Harm Panel's findings,[77] more important than age was what the child was saying; whether they were saying that they wanted contact or that they did not want contact. If children were saying that they did not want contact, then, consistent with the pro-contact culture, observed hearings suggested that their voices were ignored or minimised. In Observation 44, the older of two children was refusing contact due to the trauma of witnessing domestic abuse that had led to the father being convicted and imprisoned. The judge said that he hoped that the child would "change her mind" and want contact because the father had been on a perpetrator programme. The judge assumed that the intervention was effective, although there was no evidence of this before the court. The younger child was already having supervised contact and the judge indicated that the older child might be ordered to do so if fresh allegations of abuse were unfounded.

5.4 Unsafe, unsustainable and harmful orders

The Harm Panel report documented the family courts' overwhelming emphasis on 'making contact happen', resulting in too many cases with unsafe and unworkable orders which, in turn, caused ongoing harm to children and non-abusive parents, as well as returns to court when orders broke down. The data in the file sample suggests that little has subsequently changed in this regard. In the context of 87% of cases involving some issue of domestic abuse, it is of great concern that 33% of cases ended with joint 'live with' orders, and 44% ended with orders for unsupervised overnight contact, with a further 16% of orders prescribing progression of contact, which most often involved progression to unsupervised overnight contact after a relatively short transition period.

5.4.1 Interim vs final orders

Interim orders were made in 53% of the cases in the case files, with a median of 1 interim order per case. Final 'time with' orders were included in 67% of cases in the file sample, and final 'live with' orders in 57%. The differences between interim and final 'live with' and 'time with' orders are set out in the following tables.

Table 4: 'Live with' orders in case files - interim vs final

Live with	1st interim	Final	Change
Mother	93 (58%)	77 (33%)	-25%
Father	21 (13%)	13 (6%)	-7%
Other	5 (3%)	3 (1%)	-2%
Both	7 (4%)	78 (33%)	+29%
No live with order	33 (21%)	64 (27%)	+6%
Total	159	235	

Table 5: 'Time with' orders in case files - interim vs final

Live with	1st interim	Final	Change
Unsupervised overnight	36 (23%)	100 (44%)	+21%
Unsupervised daytime	19 (12%)	18 (8%)	-4%
Supervised/supported – professional	25 (16%)	9 (4%)	-12%
Supervised/supported – family member/friend	16 (10%)	11 (5%)	-5%
Progression of contact	8 (5%)	37 (16%)	+11%
Indirect	16 (10%)	16 (7%)	-3%
No contact	18 (11%)	9 (4%)	-7%
No time with order	19 (12%)	26 (12%)	=
Total	159	226	

The tables demonstrate striking shifts between interim orders to live with the mother to final orders to live with both parents, and between all forms of restricted contact in interim orders to unsupervised overnight contact in final orders. Both tables tell a story of initial precautions giving way to maximum involvement of both parents in their children's lives.

5.4.2 Consent orders

In 42% of cases in the file sample the first interim order was made by consent, while in 47% the order was decided by the court (with 11% unknown). This was a lower proportion of interim consent orders than might have been expected from previous studies,[78] but it may

be explained by the increased prevalence of LIPs, who tend to be more reliant on judicial decisions and less likely than represented parties to settle out of court. There was a striking difference between courts, with the proportion of interim orders by consent ranging from 25%-58%, apparently reflecting the different patterns of representation in each court (the more represented parties, the more likelihood of consent orders). Interim orders in cases before magistrates were more likely to be made by consent than were those in cases before judges.[79]

Forty-seven per cent of final orders were made by consent and 41% were decided by the court, with 11% unclear or not present on the file. There was no significant difference between 'live with' outcomes when orders were made by the court or by consent. There was some difference in 'time with' orders, with no contact orders significantly more likely to be made by the court.[80] Orders for unsupervised contact were somewhat more likely, and orders for progression of contact were significantly more likely to be made by consent.[81]

The fact that orders were made by consent, however, does not necessarily indicate that they were safe. As indicated in the earlier discussion, parents are often encouraged or pressured to settle, by the court or their own lawyers, in terms of the recommendations in the section 7 report and/or the court's expectations.[82] The observations showed that in cases where the parties indicated willingness to agree contact despite there being domestic abuse, this was always seen as praiseworthy. In Observation 35, there had been concurrent criminal proceedings (from which the mother had withdrawn), and the judge had previously ordered a section 7 assessment due to the father's poor mental health and his admission of assaulting one of the children. At the case management hearing observed, however, the mother's solicitor negotiated a final order by consent with the father, and the judge congratulated the parties for being able to agree.

In focus groups, some survivors said that they felt compelled to accept unsafe orders for fear that contesting would result in an even more unsafe outcome, such as transfer of residence. Cafcass interviewees said that mothers would agree contact, which could be unsafe.

> ***"What we hear a lot is, you know, 'I'm not opposed to contact but I just want it to be safe', and then sometimes I feel the decisions are taken for interim arrangements while the section 7 is underway almost, when really that may not be the best decision for those children at that time … What I find with, certainly victims of domestic abuse, it's a really stressful environment and, you know, what can happen sometimes is that even though a parent maybe indicated that they've been subjected to domestic abuse … once they get into the court arena and they're unrepresented and they haven't got an advocate to speak for them, they may agree to unsafe arrangements."***
>
> **Cafcass, Interview 24**

The types of orders made by consent against a background of domestic abuse raise questions about the extent to which the court scrutinises proposed consent orders in accordance with PD12J.[83] Cafcass interviewees said that there were occasions when they would feel compelled to indicate that a consent order was unsafe.

> ***"I have a case at the moment actually where parents have come to an agreement and I've written to the court and I've said, you know, 'There's still safeguarding issues going on from my perspective and I don't agree.'"***
>
> **Cafcass, Interview 16**

During observations, however, consent orders were uniformly greeted positively, regardless of any background of domestic abuse.

5.4.3 No relationship between domestic abuse and types of orders

The file data showed no association between the type of 'live with' or 'time with' orders made and whether or not domestic abuse was raised as an issue in the case.[84] All cases in which indirect contact was ordered had allegations of domestic abuse, but so did all cases in which unsupervised daytime contact was ordered. Unsupervised overnight contact and progression of contact to unsupervised overnight were just as likely to be ordered in domestic abuse cases as in cases not raising issues of domestic abuse.

In terms of types of abuse, the final 'live with' and 'time with' orders did not vary between cases in which physical or sexual abuse was alleged and those in which other types of abuse or no abuse was raised. As discussed previously, it was frequently observed in the survivor focus groups that only a criminal conviction for domestic abuse would make a difference to the court's approach. The quantitative data did show a significant correlation between the father having a criminal record (for any kind of crime) and the type of 'time with' order made,[85] but it did not make any difference to 'live with' orders, while evidence of criminal charges specifically for domestic abuse offences made no difference to either type of orders.

Two correlations were observed that almost reached the level of significance. Cases in which psychological or emotional abuse was alleged were somewhat more likely to result in shared 'live with' orders,[86] suggesting that this form of abuse was not seen as a risk to the child or a bar to parental 'cooperation'. Cases in which violent or threatening behaviour, stalking, or harassment was alleged were somewhat more likely to result in orders for contact supervised by a family member or friend – an entirely inappropriate form of supervision in these circumstances.[87] Both of these results are conducive, as the Harm Panel found, to the perpetuation of abuse against the other parent through court orders.

5.4.4 The role of section 7 reports

We attempted to determine what influenced the final orders made by the court. However, in around three-quarters of the cases decided by the court, it was not possible to glean this information from the case files, since there was no judgment or other explanation of the order

on the file. Where reasons were available, they were quite heterogeneous. There was some mention of the welfare checklist and the child's wishes and feelings. The impact of domestic abuse was mentioned in only three cases, and a further two cases mentioned paras 36-37 of PD12J. The most frequently cited influence (in 19 cases) was the section 7 report.

We, therefore, analysed section 7 reports to gauge how domestic abuse was dealt with in those reports, and the kinds of recommendations being made to the courts (which might result either in a court decision or a consent order). Overall, almost half of the cases in the file sample (49%) included a section 7 report, although there was some variation between courts in this regard. Around three-quarters of section 7 reports were written by Cafcass, with the remainder prepared by a Local Authority social worker. Only one report was written by an independent social worker.

A section 7 report was more likely to be present in cases involving domestic abuse,[88] but domestic abuse was not mentioned in 13% of the section 7 reports in these cases. There was no difference between court sites or between Cafcass FCAs and Local Authority social workers in the failure to mention domestic abuse. Where domestic abuse was mentioned, it was more likely to be as an allegation (56%) than as either an admitted (2%) or established (26%) fact. In the absence of factual determination by the stage of the section 7 report, issues of domestic abuse continued only to have the status of allegations, which inevitably diminished their impact and their likelihood of influencing the report's recommendations. This is borne out by the fact that domestic abuse was central to the recommendations in only 11% of section 7 reports. While it was considered relevant in 27% of reports, in the majority of section 7 reports if was treated as marginal or irrelevant (62%).

In light of this it is not surprising that the majority of section 7 reports where domestic abuse was raised (59%) also recommended unsupervised contact. 35% recommended supervised or supported contact, while only 11% recommended no contact. As these figures indicate, some reports contained more than one 'time with' recommendation, most usually progression from supervised to unsupervised contact. There was a strongly significant correlation between the 'time with' recommendations in the section 7 report and the final orders made in the case, whether by consent or determined by the court.[89]

One of the Cafcass interviewees felt that Cafcass officers could come under pressure from abusive and controlling parents to make recommendations resulting in unsafe outcomes.

> ***"We can't do this job in isolation … I think the difficulty is that … it's your work, it's your report, it's your decision … once it's in that report, it's out there and … .you know, you need to really feel supported … because if you've got a parent who starts exerting that control over you, you're going to make unsafe decisions."***
>
> **Cafcass, Interview 28**

More generally, however, it would appear that the pressure to recommend unsupervised contact is exerted structurally by the pro-contact culture.

5.4.5 The harmful effects of court orders

> ***"It went from supervised to supported to unsupervised. So, then all my fears came…he was living with his mum at the time, so you know, I had that kind of bit of extra security that his mum was there to look after him. He's recently moved into his own home…and things have really deteriorated."***
>
> **Survivor, Focus Group 5**

Survivors spoke about the court ordering contact, which put them and their children in danger. For example, one survivor said that the court made an order for contact three times a week with the paternal grandmother doing the handovers, but then suddenly the grandmother was not available, and she had to do the handovers with the father herself.

> ***"He said I had breached the order and applied for enforcement…now I'm doing handover with him twice a week … I don't feel safe. It's so draining. It's proper emotional abuse … the handover is so difficult … the fact that I don't want to do handover with him long term is an issue. He can just report me over and over and it will look bad on my record …"***
>
> **Survivor, Focus Group 4**

When survivors tried to raise issues of safety around handovers, they said they were told: "Just go, try and get along for the sake of the kids" (Survivor, Focus Group 4).

Survivors said that they felt there was a lack of accountability for decisions that left them and their children unsafe.

> ***"They can put children at risk. In any other forum, if a teacher or a doctor put a child at risk, there would be consequences. There is no way of feeding back how horrendous the consequences have been."***
>
> **Survivor, Focus Group 4**

They also felt that their children's safety was not the focus of judicial decision-making, but that the judges were more concerned with the father's rights.

> ***"I feel … that his rights have actually taken over my little boy's rights."***
>
> **Survivor, Focus Group 3**

One survivor expressed her disbelief that her children were left to live with the father after he abducted them.

> ***"My children, their father basically took them and I didn't know where he lived or anything … He manipulated my oldest daughter, so she's still there … she's totally different compared to what she was. And he's an abusive person, he was previous, and with his wife now. And when they got taken, they had social services involved with them, and I think it's like awful that that wasn't looked over and that they're still able to be left with him."***
>
> **Survivor, Focus Group 2**

Another survivor recounted that, at the final hearing, the father was given a 50/50 shared live with order.

> ***"This is a person who has never been with the child … left when she was three months old … I told them he's only having access to my child in the centre … the judge said, 'You will be put in prison' … I'm like, 'Go ahead' … I've been in court so long to protect my child."***
>
> **Survivor, Focus Group 4**

The qualitative data confirms the most plausible interpretation of the quantitative data – given the large gap between the number of cases where domestic abuse is raised and the very few cases where no contact or indirect contact is ordered, at least some of these orders must be unsafe.

5.4.6 The sustainability of orders

There were only seven enforcement applications in the file sample, and no enforcement orders were made. The files did not yield any evidence of appeal proceedings in any of the cases. However, there was evidence of previous child arrangements proceedings in 31% of court files.[90] This is in line with existing data on returns to court in private law children cases,[91] but it is a very high proportion, and has significant resource implications for the family courts. Given the high proportion of cases raising issues of domestic abuse, making safe and workable orders in those cases might be a contributing factor in reducing the proportion of returns to court.

6 Good practices

One of the aims of the FCRRM pilot was to identify good practices in relation to domestic abuse from the three courts in the study, and to disseminate them more widely. During the research, we noted good practices in observations and in reading the case files, and where they were described by survivors in focus groups. Judges, magistrates and Cafcass officers also described good practices in interviews, although in some instances they appeared to be ideals or aspirations that were not observed in practice.

Some of the good practices identified did not relate to domestic abuse specifically, but involved judges, magistrates and legal advisers implementing key principles of procedural justice for LIPs: treating parties with respect, dignity and empathy; taking the time to clearly explain the process, the outcomes, and what would happen next; projecting warmth and maintaining eye contact; listening carefully to what the parties were saying; and ensuring the parties felt comfortable and able to ask questions. These are practices that should apply in all cases. This section focuses, however, on specific approaches in cases involving domestic abuse.

6.1 Demonstrating understanding of domestic abuse

In some observations and interviews, professionals displayed sophisticated understandings of domestic abuse and were able to see how it was operating in a case. Examples included:

- Writing Cafcass reports through the lens of trauma.
- Approaching an FFH from a trauma-informed perspective and thinking about the effects of trauma on evidence and in cross-examination.
- Demonstrating good awareness of coercive and controlling behaviour, post-separation abuse and rape myths.
- Understanding that survivors who have recently separated may not fully comprehend and, therefore, be able to recount what happened to them during the relationship.
- Ensuring information that might be used by an abusive father to stalk or exercise further control over the mother and child was kept off the court record.
- Actively protecting the security and privacy of child and adult survivors.
- Identifying tactical and manipulative litigation behaviour by a perpetrator of abuse (in which their lawyer was complicit).
- Identifying fathers' claims about the mother's mental health as an abusive tactic, and their requests for disclosure of the mother's medical records as a form of harassment and invasion of privacy.
- Making clear to a mother alleging domestic abuse that the judge was seeking further evidence not because they did not believe her, but rather so that the best decision could be made for the child's safety and welfare, as well as the mother's safety.
- Understanding and validating the survivor's experience of abuse and its impacts on the child and holding perpetrators to account for the effects of their abusive behaviour.

Magistrates at one court praised the training they had received on the subtleties of domestic abuse beyond the stereotype of physical violence, including gaslighting and the effects of trauma.

6.2 Prioritising safety rather than contact

The Harm Panel called for a shift from the pro-contact culture to a culture of safety and protection from harm. In a few observed instances, professionals clearly prioritised safety rather than defaulting to the expectation of contact. For example:

- In Observation 26, the magistrates accepted that the home environment with the father had been aggressive and unsafe, and that the children did not want contact. They tried to urge the father not to pursue his application for increased and unsupervised contact, or to contest the section 7 report, which supported the children's position.
- In Observation 39, the magistrates invoked Practice Direction 12J to insist that the father needed to demonstrate understanding of the impact and potential future impact of his domestic abuse, and that they would not make a child arrangements order in his favour until he showed this understanding. They encouraged the father to enrol in a DAPP, expressed support for the mother, and rejected the Cafcass officer's recommendation to establish contact between the father and child as quickly as possible.
- In Observation 45, the father was in prison for drug offences and had indirect contact with the child through monthly letters. There were allegations of domestic abuse that were of great concern to the magistrates, who had seen the case previously and transferred it to a district judge. The judge had decided not to hold an FFH due to the father's incarceration, and the case had now been transferred back to the magistrates, with Cafcass recommending direct contact supervised by the maternal grandparents when the father was on day release. The magistrates did not consider the risk posed by the father had been sufficiently taken into account and also noted that he had tried to contact the mother while on day release. They refused to make an order for direct contact, continued the order for indirect contact and made it clear to the mother that she did not have to reply to the father's letters, and transferred the case back to district judge level.
- In the review of files, the researchers noted some evidence of section 7 authors considering in their recommendations the impact of contact arrangements on the mother's mental health.

6.3 Mitigating adversarialism

In one of the FFHs in the case files, the mother had been directed to file a Scott Schedule before the hearing, but, in their judgment the judge made clear that they had looked at the alleged abuse holistically as a pattern of behaviour, rather than considering the items in the Scott Schedule as separate incidents. There were other examples of judges at fact-finding looking at the whole pattern of the alleged perpetrator's behaviour.

The practice of eliciting evidence inquisitorially in final hearings where one or both of the parties are LIPs can be an effective means of avoiding abusive direct cross-examination, and may also be the most efficient way for the court to gather the information it needs to make a decision, subject to ensuring that parties have the opportunity for input in accordance with the requirements of procedural justice.

6.4 Taking a joined-up approach

We have noted earlier two examples of good practice in ensuring consistency between child arrangements proceedings and other proceedings relating to domestic abuse.

- A judge not allowing a father to use the mother's application for a non-molestation order to reopen child arrangements or to circumvent a section 91(14) order made against him (Observation 96).
- A judge acknowledging the seriousness of domestic abuse allegations and not allowing the father to argue that because the police had decided to take no further action, that meant that the abuse had not occurred and could be disregarded in the child arrangements proceedings. As well as explaining the different standard of proof, the judge noted that the family proceedings were concerned with a different question from the criminal proceedings, i.e. the impact on and risk to the child from the alleged abuse (Observation 7).

Other examples of good practice in breaking down silos and taking a joined-up approach included:

- Evidence in a case file of an FCA consulting with the mother's IDVA in preparing the section 7 report.
- A report from one of the survivor focus groups of a judge seeking to gain a thorough understanding of domestic abuse by consulting a range of agencies that had had contact with the family:

  "The judge was so good. She dug everything from the school. She told Cafcass she wants reports from the GPs, from the police, from the teachers. From anyone who has been in the children's lives."

  Survivor, Focus Group 4
- One of the courts in the study setting up regular quarterly meetings with a national domestic abuse organisation and local Cafcass manager to discuss any issues and suggestions for better practice around domestic abuse.

6.5 Not minimising domestic abuse

During the court observations, the researchers noted instances where professionals resisted opportunities to minimise abuse and insisted that it be taken seriously and considered fully.

In Observation 12, the father sought to withdraw his application for contact, but the Cafcass FCA objected, given the history of threats to kill, violence and strangulation of the mother. She felt the applicant wished to withdraw to avoid being assessed and had used the application as a mechanism for post-separation abuse. She persuaded the legal adviser that the domestic abuse was serious and that the proceedings should continue to enable a no-contact order to be made to protect the children and the mother.

- In Observation 53, the judge noted that while the safeguarding letter recommended a continuation of supervised contact, Cafcass would not have been aware of evidence on the file of the father's recent physical attacks on the mother. She ordered an FFH despite the lawyers for both parties saying they did not consider it was necessary. She was concerned about longer-term contact arrangements as the child grew older and anticipated that the father would ask for unsupervised overnight contact in the future. She wanted to ensure that Cafcass had full awareness of the facts of domestic abuse as the basis for their recommendations in the section 7 report.
- Observation 46 involved cross-applications, with the father seeking enforcement of the contact order and the mother seeking a variation to stop direct contact. The judge assessed all of the evidence on the file concerning the father's behaviour and the child's response to contact and was convinced that it was a case of domestic abuse rather than parental conflict. He made an interim order for indirect contact facilitated by solicitors, as requested by the mother, pending a report from the guardian.
- In observation 35, the judge had stopped the mother from withdrawing her application at an earlier stage because, based on the court bundle, he had fears for her and the children's safety at contact. He insisted that the local authority conduct an assessment of the father, which recommended supervised and indirect contact.

6.6 Reducing retraumatisation through the court process

In most cases observed, court staff and judiciary did their best to make special measures work as effectively as they could within the limitations of the court building and available equipment. In one case, the need for a screen in court had been noted in the safeguarding letter, but had not been arranged by the court, nor raised by the mother's solicitor, and the hearing proceeded without one. The judge picked up on the safeguarding letter, however, and proactively directed that a screen be in place for the next hearing (Observation 92).

The problem of leaving parties alone in the courtroom was addressed by one legal adviser, who remained in court with the parties while the bench retired. The legal adviser seemed very aware that the mother felt uncomfortable and reassured her several times (Observation 33). Another way of managing this issue during deliberations would be to return the parties to the waiting area while the bench retires, ensuring that the vulnerable party is placed in a private, secure area. At the beginning of the hearing, if there are special measures in place, the judge or magistrates could enter the courtroom first, before the parties are brought in, which is what occurs in many district judge cases where the courtroom is also the judge's 'office'. It would be good practice never to leave the parties alone in a courtroom together, unless they are both legally represented.

In terms of the awkward positioning of screens in some courtrooms, one magistrate told the researchers that anyone who had requested special measures was always given the option by the usher of sitting on either side of the screen – by the window or by the door – whichever made them feel more comfortable (Observation 70). The choice as to which side of the screen they would prefer to sit could be given to all vulnerable parties, with staggered entries and exits arranged accordingly.

As mentioned previously, one of the courts included in the research had created a dedicated position of special measures usher, who administered all special measures requests, ensured appropriate measures were in place for each case, and could be alert to any wider problems that needed to be addressed. This is a good practice that could be implemented in every court. As a special measures champion, such a role could also help to challenge negative attitudes towards special measures requests as 'game playing'.

Also mentioned previously was evidence of some willingness on the part of judges to make section 91(14) orders of their own motion in appropriate instances. This mechanism to restrain continued abuse through court proceedings could be used more often, but good practice is to direct the order at the abusive parent rather than mis-identifying abuse as mutual conflict and making reciprocal orders.

6.7 Listening to children's voices

The evidence from this research echoes the Harm Panel's findings that when children say they do not want contact with an abusive parent, their wishes and feelings are often disregarded, making them feel undermined and powerless. By contrast, one survivor praised the FCA who had worked with her children.

> ***"So [he] was coming home, my boy, saying he didn't want to go, my daughter was reporting things that were just completely ignored, but it wasn't until the Cafcass – we were really lucky, we had a really experienced social worker, Cafcass was really good, bang on, looking after the children.'***
>
> **Survivor, Focus Group 2**

In interview, one Cafcass officers explained that:

> ***"If the child is resistant and they've shared with us the reasons for that and if that is domestic abuse perpetration then we do what's best for the child, we absolutely don't kind of force them into doing anything they're not comfortable with or that will distress them or distress the kind of the victim survivor as well if it's, you know, if it's the mother and that's who they're living with, you know, we don't want to impact either of them really by making unsafe or unsuitable recommendations."***
>
> **Cafcass, Interview 27**

6.8 Not accepting unsafe orders

The final category of good practices observed was where judges and magistrates followed PD12J and refused to accept consent orders presented to them that did not address the risks of continued domestic abuse.

- In Observation 95, the parties had produced a consent order at the FHDRA. However, the safeguarding letter noted a video online of the father dressing the child and talking graphically about how he was going to kill the mother. The judge refused to sign the consent order and directed that a referral be made to the local authority and that Cafcass prepare a section 7 report. The report recommended supervised contact and that the father attend a course to address his behaviour before unsupervised contact could be contemplated.
- In Observation 9, the parties' solicitors presented a consent order for supported contact, to be phased up to unsupervised daytime contact. Given the severity of the domestic abuse the mother had alleged, the magistrates checked whether she had been coerced into accepting the consent order. When they were assured otherwise, they agreed to make an interim order for supported contact but listed the matter for a final hearing at which the Cafcass FCA who had raised concerns would be present.

The good practices identified above were all adopted by courts and professionals within the scope of the Child Arrangements Programme and existing resource constraints. Wider adoption of these practices would not overcome the structural barriers discussed earlier, but they would help to ameliorate those barriers and their consequences and help to achieve improved court experiences and safer and more workable orders for children and adult survivors.

7 Conclusion to Part A

The baseline data gathered for the FCRRM paints a clear picture of the trajectory of domestic abuse cases in child arrangements proceedings. Almost all cases entering the court involve some issue of domestic abuse, a factor that is not reliably revealed by any one source (the C100, C1A or safeguarding letters), other than possibly the absence of an MIAM. There is some initial recognition of risk, particularly where there are allegations of physical and sexual abuse, as evidenced by allocation decisions, safeguarding reports, precautionary interim orders, and consideration of fact-finding hearings. Special measures requested are likely to be provided, direct cross-examination between litigants in person is avoided, and there is evidence of greater willingness to make section 91(14) orders to restrain repeated, abusive applications, particularly of the court's own motion.

Nevertheless, from a relatively early stage in proceedings, the structural factors of the pro-contact culture, adversarialism, resource limitations and silo working result in most allegations of domestic abuse being treated as marginal or not relevant to the court's decision-making in the child arrangements application. Evidence of abuse is ignored, minimised or dismissed and survivors are discouraged from pursuing allegations. Few fact-finding hearings are actually held and those that proceed tend to centre around allegations of physical and/or sexual abuse, itemised and decontextualised in Scott Schedules, rather than on patterns of controlling and coercive behaviour. Lack of judicial continuity also makes it difficult or impossible for judicial officers to see patterns of abusive behaviour in the cases before them, and section 7 reports reinforce the marginality of the abuse allegations. Isolated good practices adopted by individual professionals have little impact on the overall process of attrition.

The result is orders – determined by the court or made by consent – that move children from living with their mothers to living with both parents, and/or that provide for immediate unsupervised time with the non-resident parent or progression to unsupervised contact. By this point, issues of domestic abuse have fallen by the wayside and there is no discernible relationship between domestic abuse allegations and the final orders made. As the Harm Panel documented and survivors affirmed in focus groups, however, abuse has often not fallen by the wayside for the children and survivor-parents concerned. In many cases, they will continue to live with, have contact with and be harmed by the abusive parent pursuant to the court's orders.

PART B

Next steps for the Family Courts Review and Reporting Mechanism

As noted in the introduction, the pilot of the FCRRM had two objectives – to generate data about the way allegations of domestic abuse are dealt with in child arrangements proceedings, as a baseline against which future progress can be measured; and to test methods and approaches to inform the future rollout of the FCRRM. This part of the report addresses the second objective.

8 Phase 2 of the FCRRM

Given the findings in Part A of this report, the Domestic Abuse Commissioner is convinced of the need for further rollout of the FCRRM. The rationale for its establishment, as set out in the Harm Panel report, and the reasons for the government's acceptance of the Harm Panel's recommendations in this respect, remain compelling. The findings from the pilot of the FCRRM demonstrate that, in courts operating under the Child Arrangements Programme (CAP), domestic abuse continues to be marginalised and minimised, children's voices remain muted, there is more that could be done to reduce the trauma of court proceedings for adult

survivors of abuse, and court orders continue to expose children and non-abusive parents to the ongoing risk of abuse and harm, and to prevent healing from trauma.

The advent of the Pathfinder courts has not displaced the rationale for the FCRRM. Rather, as discussed in the following section, there is a clear case for bringing the Pathfinder courts within its remit. It is also clear that the rollout of Pathfinder will be gradual, and that the majority of family courts will continue to operate under the CAP at least into the medium term. Consequently, there remains a need to improve the experience of the CAP for children and adult survivors of domestic abuse, for example by following the good practices identified in Part A of this report, and to continue to identify, disseminate and implement good practices in CAP cases.

RECOMMENDATION 1

The Ministry of Justice should commit resource and funding to a second phase of the Family Courts Review and Reporting Mechanism.

This phase of the FCRRM should continue to ask the following research questions:

1. How is the nature and impact of domestic abuse identified in cases coming before the family courts?
2. Do the family courts adequately respond to the issues of domestic abuse raised in the cases before them?
3. Does the family court process avoid retraumatisation of adult and child survivors of domestic abuse as far as possible?
4. Are the orders made by the family courts safe, fair and durable for adult and child survivors of domestic abuse?
5. Is there an improvement in the satisfaction of adult and child survivors of domestic abuse with their experience of the family court process and outcomes?
6. Are there good practices being adopted locally in relation to domestic abuse that could be disseminated and implemented more widely?

In order to answer these questions, phase two of the FCRRM should have the capacity to:

1. Produce systematic quantitative data through the analysis of case files.
2. Produce qualitative data on the day-to-day implementation of Practice Directions, good practice guidance and FCRRM recommendations through observations of court proceedings, interviews or focus groups with court professionals and parents who have been through family court proceedings, and interviews with children who have been the subject of child arrangements proceedings.

3. Engage in thematic 'deep dives' into areas identified as being of particular concern in the handling of domestic abuse cases, such as:
    - Identifying domestic abuse as an issue, in safeguarding reports and otherwise.
    - The process prior to, during and after fact-finding hearings.
    - Section 7 reports.
    - The role of lawyers in supporting clients who are alleged victims or perpetrators of domestic abuse.
    - Intersections of domestic abuse with issues relating to ethnicity, immigration status, disability and/or health status.

In terms of scope, it is considered essential that phase two of the FCRRM include both CAP and Pathfinder courts, and it is also recommended that it be extended to cover financial remedies cases. These points are discussed further in the next sections.

In terms of process, the Domestic Abuse Commissioner envisages that phase two of the FCRRM would involve the following four stages:

- Site and 'deep dive' identification and set-up (three months).
- Data gathering (six months).
- Data analysis, reporting and recommendations (six months).
- Responses to and implementation of recommendations (nine months).

The Commissioner's office would work in collaboration with the Ministry of Justice, the Family Court, HMCTS, Cafcass England and Cafcass Cymru in the first and last stages in order to ensure that the research is feasible and sensitive to current policy and operational issues; and that, on the basis of findings, there is dialogue around and commitment to implementing recommendations.

Phase two of the FCRRM would itself be subject to review to gauge its effectiveness in achieving the strategic objective of improving the experience of adult and child domestic abuse survivors in the family courts.

9 Incorporation of Pathfinder courts

The Pathfinder courts were initially established as a pilot in Dorset and North Wales, following the recommendations of the Harm Panel for a new approach to child arrangements proceedings that would centralise children's voices, LIPs and the safety and security of adult and child survivors of domestic abuse. The Pathfinder process is intended to overcome the structural barriers to the appropriate handling of domestic abuse allegations identified by

the Harm Panel and found to persist in CAP courts by this report – particularly, the barriers of adversarialism and silo working. The Pathfinder Practice Direction (Family Procedure Rules PD36Z) has subsequently been extended to all Welsh courts, and in England to Birmingham and West Yorkshire at the time of writing, and is forthcoming to Wolverhampton, Worcester, Stoke-on-Trent, Hampshire and the Isle of Wight.[92] It is anticipated that by March 2026, 25% of private law children's cases will be dealt with in Pathfinder courts.[93]

The Domestic Abuse Commissioner believes that it is essential that Pathfinder court sites be included within the scope of phase two of the FCRRM. If 25% of private law children's cases will be dealt with in Pathfinder courts by March 2026 (with that proportion likely to increase subsequently), then in order to answer the research questions listed earlier in this report, it would be a substantial omission to exclude the Pathfinder courts from enquiry. The evaluations of Pathfinder courts completed and in progress will not be an adequate substitute for the FCRRM.

9.1 Completed and ongoing evaluations of Pathfinder courts

To date, one evaluation of Pathfinder has been published and another is in progress. The published evaluation was a process evaluation from the perspective of the professionals involved and a preliminary financial analysis.[94] It did not set out to determine the outcomes of the Pathfinder process or its impact on parties and children. The evaluation did not answer the research questions listed above, and it raised new questions of its own, including:

- How domestic abuse is identified as an issue in Pathfinder cases.
- The level of referrals to domestic abuse services, particularly by local authorities.
- The capacity of local domestic abuse services and whether they are adequately resourced to support the Pathfinder process.
- The higher-than-expected level of counter- or cross-allegations of domestic abuse in Pathfinder cases, and whether this is emerging as a new form of 'systems abuse' by perpetrators of domestic abuse.
- The proportion of cases returning to court in the Pathfinder process.

These questions are important in determining whether the Pathfinder process is operating effectively in the way it was intended.

The ongoing evaluation is focused on the experience of parties and children in the two original Pathfinder pilot courts. This is crucial information for gauging the overall success of the model. Discrepancies between the views of professionals and the accounts of survivors found in the Harm Panel report and in the FCRRM pilot demonstrate how important it is to consult with survivors directly, and how misleading it would be to assume survivor and child satisfaction based on professional impressions.

Even if the outcomes of this element of the Pathfinder evaluation are broadly positive however, it can confidently be anticipated that the evaluation will also raise questions that will benefit from further exploration. For example, the Harm Panel identified issues of race, class and geographical location intersecting with the structural barriers to exacerbate the minimisation of abuse and the trauma of the court process for some survivors. It is not clear whether the sample of court users from the Pathfinder pilot courts will be sufficiently large or diverse to enable the impact of these factors to be determined in the Pathfinder process. In focusing on the original two Pathfinder pilot courts, the evaluation will also not include the experiences of survivors in courts that have subsequently adopted the Pathfinder process.

9.2 The rollout of Pathfinder to other courts

More generally, the completed and in-progress evaluations of the Pathfinder pilot courts do not and will not necessarily indicate how the process is operating as it is rolled out, particularly in larger courts, such as Birmingham and South East Wales. Neither does a one-off early evaluation necessarily indicate how the process will operate in the pilot courts themselves in future years. There are a number of specific reasons to indicate that inclusion of Pathfinder courts within the FCRRM would be beneficial.

These include, firstly, the dropping of the third stage of the Pathfinder model from Practice Direction 36Z, without any alternative to replace it. The Harm Panel recommended that once court orders were made, the family court should take responsibility for ensuring the safety and durability of its orders by contacting the parties and children after a period of 6-12 months to determine how well the orders were working. This was designed to address the major theme in responses to the Harm Panel's call for evidence, that children and non-abusive parents were left to live with unworkable, unsafe and harmful orders for years following the court proceedings, with no one asking about their effect; or that children and parents were ignored, threatened or punished if they tried to raise concerns about the harmful effects of child arrangements orders. Stage three of Pathfinder was also designed to proactively head off the very high rate of returns to court in child arrangements cases, which consume a significant amount of court resources. The findings of the FCRRM pilot show that returns continue to be a substantial issue in CAP cases. The Pathfinder process evaluation found that this review stage was 'confusing for families and difficult to operationalise'.[95] This is not surprising if this stage was never adequately conceptualised, designed or understood by the professionals and court staff tasked with implementing it. But the Ministry of Justice simply report that "Work is ongoing to identify an alternative way to support families after a final order."[96] This leaves the very serious problems originally identified by the Harm Panel unaddressed. Either the absence of any follow-up, or whatever is put in place to provide for it, will need to be the subject of ongoing review.

Secondly, the Domestic Abuse Commissioner has concerns about potential issues emerging from the Pathfinder rollout regarding:

- Reduced emphasis on consultation with children for the Child Impact Report.
- Limited time for child consultation, such that meeting inflexible time standards for the delivery of reports is prioritised over giving children an adequate and tailored opportunity to express their views.
- Lack of referrals to domestic abuse services.
- Ongoing difficulties with the commissioning and resourcing of domestic abuse services.
- Lack of training for lawyers about the Pathfinder process and the different role they play in supporting clients in an investigative, problem-solving (as opposed to adversarial) process.

More generally, there is an inevitable tendency for any new process to degrade and lose focus when it transitions from being a pilot to which special effort is committed, to being 'business as usual'. Inclusion of Pathfinder courts within phase two of the FCRRM would materially assist the family court in the implementation of the Pathfinder model. It would make an important contribution to the court's capacity to maintain the focus of Pathfinder, and to ensure that it is operationalised consistently and in accordance with its original intentions.

9.3 Comparison between Pathfinder and the CAP

Evaluations focused only on the Pathfinder courts fail to locate them within the overall domestic abuse ecosystem. The comparison between the Pathfinder pilot courts and two 'matched' CAP courts in the process evaluation was done mainly for the purpose of assessing comparative costs. But if it is claimed that the Pathfinder process is better at dealing with domestic abuse cases than the CAP, then the two processes must be systematically compared, asking the same questions and using the same methods of data gathering and analysis. The FCRRM is best equipped to provide such a systematic comparison. Furthermore, the FCRRM is best placed to consider how good practices identified in the Pathfinder courts might be carried over to CAP courts.

RECOMMENDATION 2

Pathfinder court sites as well as CAP courts should be included as part of the intensive court study in phase two of the FCRRM.

10 Incorporation of financial remedies cases

Since the Harm Panel report was published in 2020, concerns around how domestic abuse is dealt with in financial remedies cases have assumed greater prominence. In particular, Surviving Economic Abuse have done important work to raise awareness of economic abuse as a prevalent form of abuse that takes multiple forms and has serious lifetime consequences for the material wellbeing of survivors and their children, and their ability to recover from abuse.[97]

In 2024, the 'Fair Shares' project funded by the Nuffield Foundation, which investigated how divorcing couples in England and Wales negotiate financial arrangements, both inside and outside the legal system, produced a separate report on cases involving domestic abuse.[98] The report identified the frequency of financial abuse among the forms of abuse experienced by survivors who said that their marriage had broken down due to domestic abuse. The majority of these survivors were caring for dependent children. The report also found that female survivors of domestic abuse were more financially disadvantaged at the end of their marriage than other divorcing women.

In the same year, Resolution published the results of a survey of over 500 financial remedies practitioners, which showed that 80% of respondents believed that domestic abuse, and specifically economic abuse, is not sufficiently taken into account in financial remedy proceedings.[99] Issues identified included inadequate financial support for survivors of domestic abuse attempting to bring financial remedy proceedings, inappropriate referrals to non-court dispute resolution, continuing financial abuse through the family court process, such as non-disclosure of assets and breaching court orders, and substantive outcomes of financial remedy proceedings that left survivors vulnerable and perpetuated rather than addressed the consequences of economic abuse.

Two recent decisions of the High Court, *Tsvetkov v Khayrova*[100] and *N v J*,[101] contribute to these concerns. These decisions erect substantial barriers to applicants wishing to argue that domestic abuse in the marriage amounts to "conduct which it would be inequitable for the court to disregard"[102] in making its decision on financial remedies. As such, they mirror in financial proceedings the practices found by the Harm Panel and the current research in child arrangements proceedings, whereby only exceptional instances of abuse – those judged the most 'serious' in the court's estimation – receive a response, resulting in many orders being made that expose adult and child victims of abuse to the risk of further abuse and material harm.

The Law Commission's recent *Financial Remedies Scoping Report*[103] represents a missed opportunity to propose reforms that would allay the concerns raised in the Resolution report, despite evidence from domestic abuse experts presented during the Commission's consultation. None of the options for the reform of the law on financial remedies put forward

by the Law Commission would directly address the question of how the family courts might prevent economic abuse and remedy the long-term economic effects of abuse on survivors and their children.

The Fair Shares report makes clear that children as well as adult survivors are victims of economic abuse. Consequently, child arrangements orders are not the only family court orders that might be a source of ongoing harm to children and their non-abusive parents.

RECOMMENDATION 3

As well as reviewing child arrangements cases, phase two of the FCRRM should incorporate the review of financial remedy cases, applying the same research questions to these cases.

As the FCRRM pilot has done, the phase two research on financial remedy cases would test data instruments and generate data that would serve as a baseline for measuring subsequent improvements.

11 Inadequacy of administrative data

It was initially the intention of the FCRRM pilot to review the extent and quality of available administrative data relating to the family court to understand if and to what extent this data could inform aspects of the FCRRM. During the course of the research, however, the National Centre for Social Research (NatCen) published its report on *Data in the Family Justice System: What is Available and to Whom* (July 2024), which superseded this aspect of the pilot study.[104] This section considers the NatCen findings, alongside the experience of extracting data from case files for the FCRRM pilot.

The Domestic Abuse Commissioner is aware that HMCTS is planning to introduce a new Core Case Data system (CCD) for the family courts to replace FamilyMan, their current case management system. Rather than relying on manual entry of limited data from forms, directions and orders, as FamilyMan does, CCD will incorporate a much wider range of information about family court cases gathered directly from electronic forms and case management records. This will substantially increase the data available on family court proceedings. However, the pilot of this new system revealed a need for further development and its introduction has been delayed. It is not yet clear whether CCD will fill all the current data gaps or what the quality of the data it produces will be. The recommendations below suggest how current forms and data recording practices could be optimised, as well as looking forward to the kinds of data that should be recorded within the CCD.

11.1 Domestic abuse data

The NatCen report identified that data on the presence of domestic abuse in family court cases is not routinely collected by Family Justice agencies. There is currently no distinct flag for domestic abuse on FamilyMan. The 'harm flag' indicates the presence of a safeguarding issue, but this could arise from any one of a number of problematic parenting behaviours rather than domestic abuse specifically. Cases involving domestic abuse are not currently able to be disaggregated from cases involving other types of safeguarding risk. Moreover, the harm flag is currently only recorded at the beginning of a case and is not updated as the case progresses. This means that safeguarding risks that emerge in the course of proceedings are not captured.

Given the high prevalence of domestic abuse identified in this research, this gap is, on the one hand, alarming, although on the other hand, perhaps no longer such a matter of concern. From one perspective, a 'domestic abuse flag' would have the value of signaling to the court before every hearing that domestic abuse is an issue in the case and would raise consciousness about how it is responded to, as well as potentially enabling tracking of the prevalence of domestic abuse in child arrangements proceedings over time. But at the same time, given its prevalence and the fact that it was by far the most frequently identified safeguarding risk, the court might safely assume that domestic abuse is likely to be an issue in every case, with a flag being of more value in the infrequent cases in which safeguarding risks without domestic abuse are present.

In this study, the research team found that data indicating the presence of domestic abuse as an issue was extracted relatively easily from key documents – in particular, the C100, C1A and safeguarding letters. This suggests that the more comprehensive collection of application data planned as part of the CCD may improve the availability of data about domestic abuse in child arrangements cases. However, while the CCD will capture data entered into forms, the contents of safeguarding letters and section 7 reports may not be captured, since these consist of unstructured text rather than a closed list of options or structured responses. For the purposes of CCD, therefore, it would be useful for a summary checklist to be developed and attached to the relevant documents, recording issues discussed and recommendations made in safeguarding letters and section 7 reports, to enable quantitative data to be captured from these important sources.

RECOMMENDATION 4

Data on (i) the presence of domestic abuse concerns and (ii) the type(s) of domestic abuse raised, should be routinely collected by the new CCD system from online forms, safeguarding letters and section 7 reports.

The NatCen report noted that Cafcass England currently partially records data on domestic abuse in their systems based on whether there has been a professional judgement of domestic abuse during Cafcass involvement. Given the discrepancy identified in this research between the number of cases involving allegations of domestic abuse and the number of cases in which a professional judgement of domestic abuse was made, this is likely to result in significant under-reporting, as well as potentially misleading reporting where cross-allegations of abuse are validated rather than a primary perpetrator being identified.

RECOMMENDATION 5

Future data collection focusing on domestic abuse in the family justice system should record allegations that are not endorsed by professional judgement as well as those that are. Data should disaggregate between:

- **Allegations by the mother against the father**
- **Allegations by the father against the mother**
- **Allegations by either party against a same sex partner**
- **Allegations by either party against third parties, and**
- **Allegations judged to be relevant by Cafcass England, Cafcass Cymru and the court.**

11.2 Types of domestic abuse

While domestic abuse is currently asked about as part of the C100 and C1A forms,[105] the research team noted a number of problematic features of the C1A form that would benefit from revision. These relate both to enhancing the data that it captures, and improving its functionality as a means to inform the court about domestic abuse affecting the family:

- Coercive and controlling behavior, stalking and harassment are absent from the categories of domestic abuse included on the form. Consequently, use of the current form to capture data on domestic abuse would result in these types of abuse being underrepresented or missed altogether.
- There is no attention to so-called honour-based abuse and harmful practices, such as female genital mutilation (FGM). This means there is currently no place within the C1A form for these issues or previous orders related to these issues to be recorded by parties.
- The existing categories of abuse are listed in an order that suggests either an implicit hierarchy of seriousness or expected relative prevalence ('physical, emotional, psychological, sexual, financial').
- The 'short description' and 'response' pages are laid out like a Scott Schedule and, although the page asks for a description of 'what happened', the notes at the end on Section 2 refer to 'information about incidents'.

RECOMMENDATION 6

6.1 The categories of abuse in Section 2 of the form should be extended to include 'coercive and controlling behaviour', 'stalking', 'harassment' and 'honour-based abuse'.

6.2 The categories should be listed in alphabetical order: 'coercive and controlling behaviour', 'emotional', 'financial', 'harassment', 'honour-based abuse', 'physical', 'psychological', 'sexual', 'stalking'. The placement of coercive and controlling behaviour at the beginning of the list is also appropriate given its status as an overarching description that might encompass all of the other forms of abuse as tactics of control and coercion.

6.3 The list of orders in Section 2 should be extended to include FGM protection order.

6.4 The table on p.3 of the form should not be a grid with rows and columns but rather should only have columns (or the columns should be converted into rows) with space for narrative answers.

6.5 Likewise, the response section on p.9 should not be set out in the form of an itemised list but should be a single text box allowing for a narrative response.

6.6 References in the Notes to Section 2 to 'incidents' and 'individual incidents' should be removed, and instead the guidance should encourage the person completing the form to describe holistically the nature and extent of the abusive behaviour they allege, and how they believe it has impacted on the children.

11.3 Demographic data

While a wide range of data types were able to be extracted from case files, it is noteworthy that ethnicity, disability and health data relating to the parties and children were not routinely recorded in files and were sometimes difficult to extract from the available documents. This echoes the wider gaps identified by NatCen in relation to these data categories. NatCen stressed that this data is not currently captured and is not likely to be captured comprehensively by the CCD. Ethnicity data appeared only to be available in case files if there was an established practice within the local Cafcass or Cafcass Cymru teams of documenting it within their reports. Where the majority of the local population was white British, ethnicity data was typically only recorded in reports for non-white-British families, suggesting that 'white British' was assumed as the 'default' ethnicity and was, therefore, not deemed necessary to record.

RECOMMENDATION 7

The ethnicity of parties and children in proceedings should be routinely recorded as part of the C100 form, and also routinely recorded by professionals in reports, using established ONS ethnicity categories for consistency and comparison.

Additionally, despite disability currently being recorded on the C100 form in relation to the need for special measures, the case file study suggested that data pertaining to disability and health issues of parties and children is not recorded as a matter of course in the key forms. Researchers were more likely to identify these factors from reading statements and reports than in applications. To gain a more accurate picture of the prevalence of disability and health issues among parties and children in the family court, the systematic recording of these issues could be improved.

RECOMMENDATION 8

A general question about disability within the meaning of the Equality Act 2010 together with a dropdown list of types of disability and health conditions should be included in the C100 form for both parties and children, to increase understanding of prevalence in the court population and assist the court and Cafcass/Cafcass Cymru in the handling of individual cases.

11.4 Special measures and QLR data

The researchers found that applications for and the provision of special measures and QLR appointments were not routinely recorded on case files. The operation of specific responses to domestic abuse and the implementation of the Harm Panel's recommendations, therefore, remain opaque and appear not to be systematically monitored by the family court. According to the NatCen report, these particular gaps will not be addressed by the new CCD system.

In order for the court to be able to assess its own handling of cases involving allegations of domestic abuse, it is imperative that data relating to special measures and QLR appointments is routinely recorded.

RECOMMENDATION 9

9.1 That the tick-boxes for requests for special measures on the C100 and C1A forms be harmonised.

9.2 That correspondence, administrative records and case management directions and orders relating to requests for special measures and for the appointment of a QLR always be added to individual case files.

9.3 That hearing record templates be built into the CCD to include tick-boxes for whether:

- Either of the parties was provided with a secure/separate waiting area
- A screen was provided in court for either of the parties
- Either of the parties attended remotely
- Either of the parties was accompanied by an IDVA or DA support worker
- Either of the parties was accompanied by an intermediary
- An interpreter was present for either of the parties
- Any other special measures were in place for either of the parties
- A QLR was present for either of the parties
- Either of the parties were legally aided.

11.5 Reasons for decision

Understanding the findings and orders made by the court in domestic abuse cases was hampered by the fact that in a substantial minority of FFHs and the majority of final hearings there was no written judgment on the file, presumably because the judgment was delivered ex tempore. Schedules of findings were also missing from several of the files where an FFH had been held. More comprehensive recording of decisions and reasons would assist in analysing the court's response to domestic abuse allegations and the outcomes of cases raising issues of domestic abuse.

RECOMMENDATION 10

10.1 A schedule of findings should always be recorded following a fact-finding hearing, as required by PD12J.

10.2 Where an ex tempore judgment is given following a fact-finding or final hearing, the notes used for the judgment should always be added to the file.

11.6 Lack of oversight

The NatCen report concluded that family justice data systems are currently designed to fulfill administrative functions rather than to facilitate monitoring or transparency of family court processes and outcomes. Data sources relating to the family justice system are patchy and incomplete. No agency or organisation exercises complete oversight or ownership of data and access to data varies between different data sources and stakeholder groups.

One consequence of this is that the courts, the Family Justice Board and policymakers are unable to use data at any granular level to identify performance issues or to monitor performance in relation to strategic priorities, such as domestic abuse and harm. Another is that there is a chilling effect on independent research undertaken for academic and public interest purposes, such as that conducted for the FCRRM pilot study, because it is laborious, time-consuming, resource-intensive and uncertain.

To address this lack of comprehensive oversight and transparency, it is recommended that the Ministry of Justice should assume responsibility for overseeing the scope and quality of, and the provision of access to, family court data.

RECOMMENDATION 11

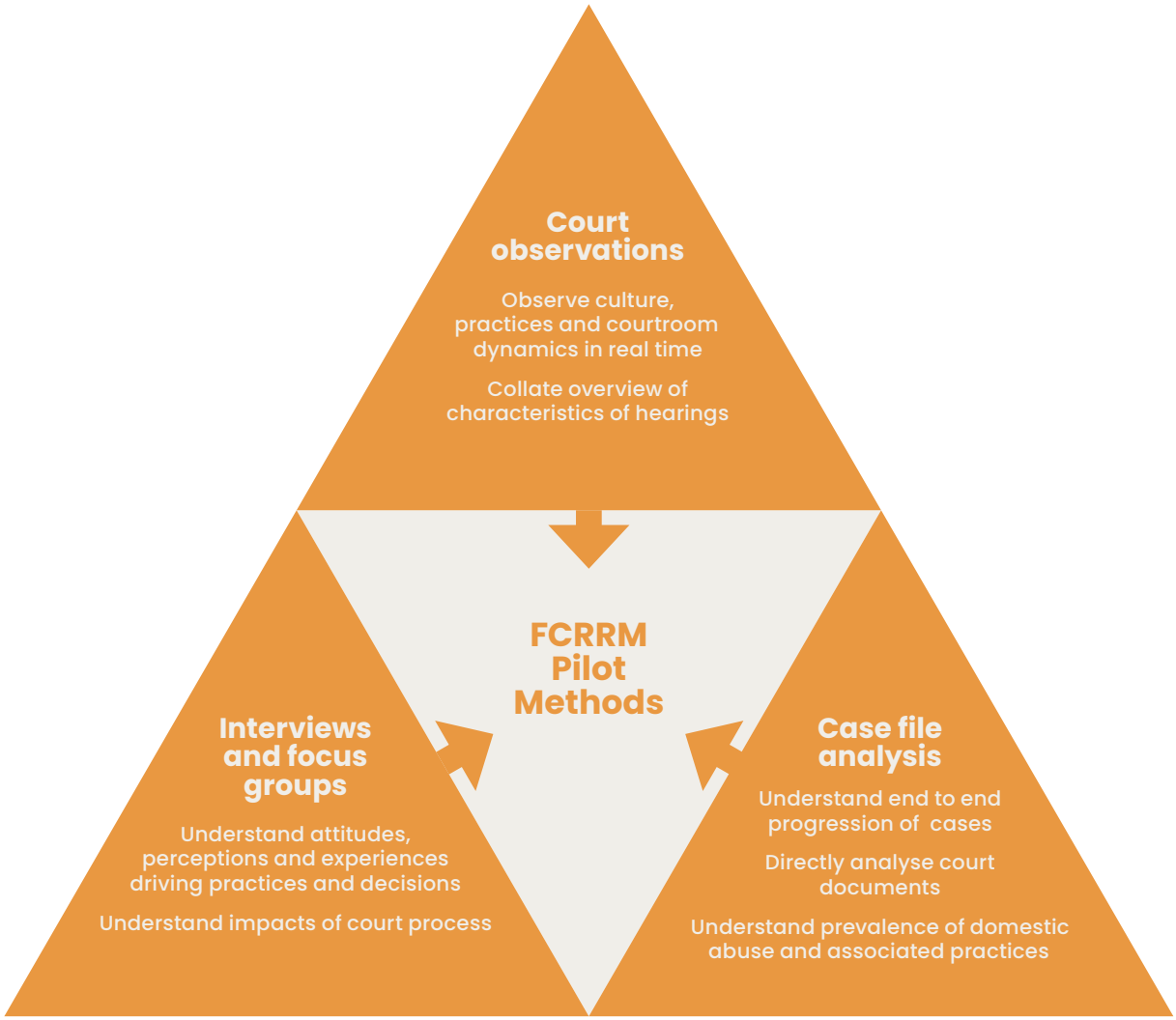
The Ministry of Justice should create an analytics team focused on overseeing and analysing family court data and making that data publicly available. This team should:

- **Have input into the ultimate design of the CCD system**
- **Provide data analysis to inform family justice policy and strategies**
- **Publish reports going beyond the basic family court data currently available,[106] and**
- **Be the single point of contact for and facilitate access to family court data for independent research.**

12 Data gathering strategies

The pilot of the FCRRM adopted a mixed-methods, multi-perspectival approach employing a range of qualitative and quantitative methods – court observations, case file analysis and interviews with professionals and survivors – which gave access to different kinds of data and collectively provided a comprehensive insight into how cases raising issues of domestic abuse are dealt with in the family court. This section reviews the strengths and limitations of each method and identifies possible strategies to optimise future roll-out. Further details of the methodology can be found in Annex 1.

Figure 1: Methods used for the FCRRM pilot



12.1 Court observations

The court observations enabled rich qualitative data to be gathered on how family court processes operate in practice in hearings, and the visible effects of the proceedings on parties. Among other things, data was gathered on courtroom dynamics between the parties and between parties and professionals, the conduct of cross-examination and the implementation of special measures, and how decisions were made and communicated. Researchers were able to identify practices in dealing with domestic abuse that appeared to be particularly helpful or problematic. Important data relating to the overall culture within the family court was also gathered alongside formal observations of hearings, through informal conversations with professionals and observations of court waiting areas and court rooms before and after hearings. Quantitative data from the observations described the characteristics of parties, cases and hearings and the prevalence of domestic abuse allegations in the observed hearings. It provided a useful overview of a cross-section of family court hearings and allowed quantitative data to be gathered for some variables that could not be obtained as part of the case file analysis, such as the implementation of special measures and the length of hearings.

While they yield valuable results, undertaking court observations is resource intensive. In order to maximise the range of hearings observed, most hearings included in the pilot were observed by only one researcher. In this situation, researchers reflected that they could find it hard to record what was said and watch the proceedings at the same time, and to attend to procedural elements as well as behavioural elements of hearings simultaneously. Resourcing only two (and sometimes only one) researchers in court each day also resulted in difficulties with organising cover for a researcher in the event of illness or emergency during the observations, and inability to observe all relevant cases heard during the observation period. Researchers made an initial running record of each hearing while in court, which was then used to fill out a Microsoft Word template covering key data and reflections. Quantitative data from the templates was extracted and entered into a Microsoft Excel spreadsheet, which was imported into SPSS for analysis. Once the coding themes for the qualitative data were decided (reflecting the themes in the Harm Panel's report), qualitative data was extracted thematically from the templates into Microsoft Word documents and grouped by sub-themes. This process as a whole proved to be quite time-consuming.

ADJUSTMENTS

Future FCRRM court observations could be optimised by:

1. **Ensuring that two researchers are available to attend each hearing observed. This would allow for one researcher to take notes on procedural and legal issues in the hearing and the other to focus on observing the behavioural dynamics in the courtroom.**
2. **The creation of an online survey to replace the Microsoft Word template, that would automatically collate quantitative data into a Microsoft Excel spreadsheet. This would save time by obviating the need for researchers to manually extract quantitative data from templates following observations.**

12.2 Case file analysis

The case file analysis enabled the collection of systematic baseline data on child arrangements cases and the prevalence of different types of domestic abuse and procedural responses to it. Compared with court observations, which focused on the characteristics of hearings, in the case file analysis, researchers were able to review the entirety of a case, its length and at what point in proceedings domestic abuse was raised or dismissed. In terms of qualitative data collection, researchers were able to analyse the structure of key forms, such as the C100 and C1A, and analyse how domestic abuse was written about by parties, Cafcass, Cafcass Cymru and local authority practitioners in witness statements, safeguarding letters and section 7 reports. For the most part, the documents and information we expected to find in the files were present (other than in the areas discussed in the previous section) and well ordered. The quality and completeness of case files was

broadly similar across the three courts studied, although it is possible that this may not be reflected elsewhere in England and Wales.

Quantitative and qualitative data from the case files was gathered using a 120-item online questionnaire, comprising of mostly closed but some open-ended questions. The online survey software automatically collated the data into a Microsoft Excel spreadsheet. The researchers uploaded this spreadsheet into an SPSS database to run statistical analyses. Although entering data into the survey was easier to navigate than directly entering it into a spreadsheet or database, researchers found that completing 120 questions per case could sometimes present difficulties and result in questions being unintentionally missed. On reflection, it was felt that some of the questions in the survey were unnecessary and replicated data that had been gathered via other questions. Researchers also reflected that they often had go back and forth between survey items multiple times during data entry for each file, which often proved time consuming. Some questions proved to be open to different interpretations, which were resolved by the researchers in the process of data gathering, but which could be clarified for future reference.

ADJUSTMENTS

The navigability of the survey and the quality of data collection could be optimised by:

1. **Reviewing the survey questions to eliminate duplication and identify opportunities to shorten its length.**
2. **Revising the order of questions in the survey to correspond closely to the typical ordering of information in files (for example, starting with questions relating to the C100 and C1A forms as they are typically the first documents encountered in each file).**
3. **Providing clear instructions on the intention and purpose of questions, which posed issues of interpretation in the pilot.**

12.3 Focus groups and interviews

The pilot collected three strands of interview and focus group data from (i) judges and magistrates, (ii) Cafcass and Cafcass Cymru Family Court Advisors and (iii) survivors of domestic abuse who had been through the family court. The researchers also initially aimed to include a focus group with perpetrators of domestic abuse and to interview children who had been the subject of family court proceedings in the three court areas. However, the team encountered intractable difficulties in implementing these strands of the research. The absence of these voices is a limitation of the pilot, and how the difficulties encountered may be overcome in Phase 2 of the FCRRM is discussed further below.

Data gathered via interviews and focus groups was valuable in helping researchers understand specific perspectives on and experiences of the family court. It was also valuable to be able to compare the accounts of professionals and survivors, and to compare accounts given in interviews/focus groups with the observations and case files. Observational and case file data provided a check as to whether the practices described by interviewees were borne out in reality, while interview data provided additional information to explain the impacts on survivors and the thinking and motivations of professionals behind what was observed in hearings and read in case files. The advantage of focus groups for survivors was that while some survivors found it difficult to speak about their family court experience initially, the researchers observed that they ultimately found the experience of participating in the focus group empowering and valued meeting others who had experienced similar issues, as well as allowing them to have a voice about the impact of the process on themselves and their children.

Judicial interview participants were recruited at each court in the course of the research visits, with interviews taking place either in person at the court or subsequently via Microsoft Teams. Cafcass and Cafcass Cymru interviewees were selected internally by the relevant organisation and put forward for interview. These interviewees appeared to be particularly knowledgeable about domestic abuse and described a range of good practices, although those practices were not always reflected in the case files and observations. One group of professionals not included in the research were legal advisers to the magistrates. The research team was unable to obtain permission to interview legal advisers as part of the courts visits; however, obtaining their perspectives on domestic abuse cases, and their role in the process, would have been a valuable addition to the study.

Male survivors, LGBTQ+ survivors and perpetrators of abuse were not well represented in this research. The researchers intended to recruit different groups of survivors and perpetrators through local services in the three court areas. Due to the current dearth of local specialist and 'by and for' services in England and Wales, the researchers also sought to recruit male survivors and LGBTQ+ survivors from services with regional and national reach. However, these groups proved difficult to recruit. Difficulties in recruiting perpetrators were linked to the absence of Cafcass-commissioned DAPPs to recruit from, and although other services providing perpetrator interventions were contacted by the research team, the staff felt it would be difficult to identify suitable participants and foresaw issues conducting interviews that would be safe for both participants and researchers. The researchers worked with a service providing support to male survivors; however, they encountered problems identifying suitable respondents to participate in a focus group and several potential participants dropped out of the focus group that was scheduled. The researchers were in contact with a general LGBTQ+ support service in one area but correspondence with this service ended, despite the researchers' efforts.

ADJUSTMENTS

1. To reduce the risk of not being able to recruit participants from certain groups and to ensure that recruitment can be started at an early stage in future, a database of local and national services supporting minoritised and marginalised survivors and services supporting perpetrators should be collated prior to the inception of the next FCRRM.
2. Where it is difficult to recruit participants for focus groups, the research should explore alternative methods of accessing their experiences, such as through advocates and support workers.
3. Ideally, Legal Advisers should be included as interviewees in future iterations of the FCRRM.
4. Given the key benefit of interviews in providing a more holistic understanding of existing practices and processes, to complement and flesh out the data gathered from observations and court files, it is most helpful if interviewees are able to offer a view that is embedded in and can help to interpret local cultures, rather than presenting an 'official' or 'representative' organisational view.

13 Improving the process of gaining permission to access and collect data in the family court

Despite the pilot of the FCRRM being commissioned by the MoJ as a consequence of the findings and recommendations of the Harm Panel Report, the researchers encountered several barriers during the process of gaining necessary permissions to conduct the pilot research. The initial timeline for the pilot project was 12 months; however, due to delays gaining permission to collect and access data from the family court, the final timeframe for the pilot doubled to 24 months. The researchers found that the current processes to conduct empirical research in the family court are piecemeal, complex and non-transparent. In part, this was due to the fact that access procedures had recently changed at the time of the initial application for permissions, without that change being advertised or clearly specified, and without any person designated as being clearly responsible for managing the process.

Consequently, the research team was compelled to dedicate significant resources and time to identifying the correct procedures and the relevant gatekeepers to access and collect data. The process of accessing case files from the family court was particularly complex and opaque, and required engagement with numerous stakeholders: notably, senior Judiciary, the individual court areas, MoJ and HMCTS. Additionally, due to difficulty securing University ethical approval, the voices of children who had been through the family court were not able to be included in the pilot.

Issues in accessing and collecting data from the family court are expanded upon below. In light of this experience, the researchers outline several recommendations to improve the process of accessing and collecting data from the family court for the purposes of phase two of the FCRRM.

13.1 Applying to access and collect data from the family court

The research team initially sought approval to conduct observations and access case files in the family court through the HMCTS Data Access Panel. Until recently, this was the standard process by which researchers gained access to family court data. However, upon receiving feedback on the initial application, the researchers learned that HMCTS no longer grants permission to access court files and conduct observations. Rather, the role of HMCTS is to facilitate access to data once the research has been approved and signed off by the President of the Family Division under Practice Direction 12G. The Data Access Panel was also experiencing resourcing issues at the time of the application, which meant that this feedback was considerably delayed.

It was then necessary to submit a formal application to the President of the Family Division office to obtain a letter of approval from the President. This required further liaison between the DAC office, the President's office, the Judicial Lead for Research and the Domestic Abuse Commissioner to ensure that the application was actioned. A letter of approval was eventually received after the researchers were asked to make several revisions to the initial application and further substantial delays.

RECOMMENDATION 12

To prevent delays, unnecessary steps, uncertainty and inconsistency, the process of obtaining permission to access and collect data in the family court ought to be transparent and facilitative, with inbuilt timescales.

13.2 Applying to conduct interviews with family court professionals

To obtain permission to interview judges and magistrates, the research team submitted a separate application to the Judicial Office, in accordance with the process outlined on the Judicial Office's website at the time. This application was not responded to for several months. Permission was eventually provided as part of the President's letter granting approval to access and collect data in the family court under Practice Direction 12G. As the granting of approval for judicial interviews was consolidated with the grant of approval for the court observations and case file analysis, it would have streamlined the process if an application in respect of all three data sources could have been submitted collectively from the start.

RECOMMENDATION 13

To simplify the process of obtaining judicial permission for different project strands, it should be possible to seek permission for all relevant strands involving the family court and the judiciary in the same application.

13.3 Identifying court sites

The three court sites were identified early in the research process in consultation with the FCRRM Operational Advisory Board and the senior judiciary. The judiciary were concerned that facilitating the research would place further demands on already stretched courts, especially if the court was already supporting other research and evaluation or pilot activities. For this reason, the two pilot Pathfinder court sites were specifically ruled out of contention, resulting in the pilot of the FCRRM focusing on CAP courts, and limiting the range of sites to which the researchers had access to those that were perceived to be adequately resourced to facilitate the research. This meant that the researchers had to compromise their initial selection criteria when it emerged that no courts meeting particular criteria were currently able to facilitate the research.

While court capacity is of course an important consideration, the researchers subsequently sought feedback on the impact of the research on the participating courts. The feedback received indicated that no difficulties were experienced, and that the opportunity for reflection as part of the research process was welcomed in some cases. The advent of e-files has no doubt helped to limit the impact of research visits, as it is no longer necessary to access hard-copy court files on site. The research team also developed a modus operandi for identifying hearings to observe, which relied on existing administrative processes and did not require court staff to undertake any additional analysis of upcoming hearings. The question of capacity needs to be set against the risk of selection bias and the court sites studied being unrepresentative of the general picture. If the court sites included in the pilot were those operating with what were perceived to be manageable workloads, it can only be assumed that those whose capacity is more stretched or overloaded would have even less time and attention to devote to domestic abuse cases.

Once sites had been identified, the researchers met with and sought permission from the Designated Family Judges (DFJs) for each selected court site. This was initially done before the researchers learned that access approval needed to be sought from the President of the Family Division rather than from HMCTS. This meant that, although the court sites were identified early on, court involvement was not approved by the relevant DFJs until the researchers had obtained the approval letter from the President.

RECOMMENDATION 14

Learning from the pilot of the FCRRM in terms of how to manage and minimise the impact of research visits, future court site selection should aim for a good cross-section of courts in order to gain as representative a picture as possible of the way cases raising issues of domestic abuse are dealt with across the family court.

13.4 Accessing electronic court files

Once permission to access case files had been obtained from the President of the Family Division, the researchers encountered further barriers to directly accessing electronic court files via the MoJ and HMCTS information systems. Access issues had been anticipated early on by the research team; consequently, requests for the researchers within the Domestic Abuse Commissioner's team to have MoJ laptops and accounts had been submitted. This step was essentially designed to streamline the process by precluding the need for family court data to be shared outside of the MoJ, as it allowed the researchers to access the files internally through MoJ systems and accounts. Despite laptops and accounts being sought proactively early in the process, delays were still encountered due to invoicing the costs involved with set-up.

The research team liaised with the HMCTS data security team to facilitate access to the court files. As part of this process, the research team needed to prepare and submit a Data Protection Impact Assessment (DPIA). This process proved to be lengthy due to the lack of transparent guidance and the fact that the research team were only able to communicate with the data security team through other HMCTS gatekeepers, rather than having a direct line of communication. The process was further delayed by HMCTS requests for elaboration on proposed data security measures.

Additionally, the timing of the FCRRM application coincided with a period of internal change within HMCTS, whereby the Data Access Panel were not able to facilitate privileged access to family court data due to their own access agreements and procedures undergoing revision. Because of this, a bespoke data sharing agreement for the FCRRM needed to be put in place between the researchers and HMCTS prior to the case files being accessed, which entailed several steps and created further delay to the research.

Once the agreement was in place, the individual court sites were informed of the researchers' access and, consequently, granted relevant access permissions for the researchers' MoJ accounts and laptops. While this process was relatively straightforward for accessing electronic files at two of the court sites, the researchers encountered further delays at one court site due to the fact that permission to access the electronic files needed to be ratified by a MoJ IT manager as well as the local IT staff. It took many weeks to resolve this access issue, due to the difficulty of identifying which internal teams and staff could help to accurately diagnose and address the issue.

RECOMMENDATION 15

To prevent the recurrence of access issues and consequent delays, a general privileged access agreement should be put in place to ensure that the Domestic Abuse Commissioner's Office can access family court data for the purposes of phase two of the FCRRM.

13.5 Ethical approval for interviewing children

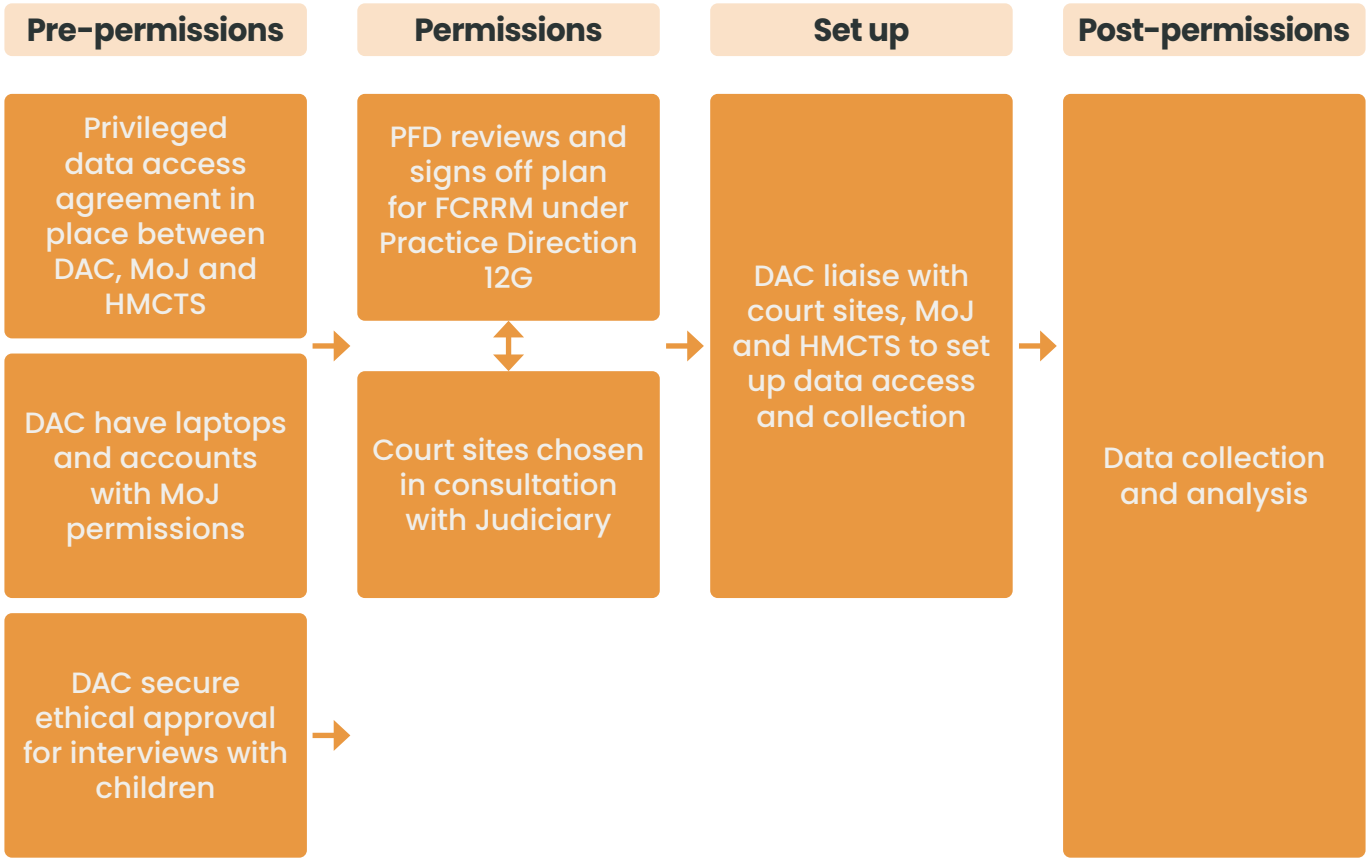
In addition to permissions from the President of the Family Division (and from Cafcass and Cafcass Cymru to interview FCAs), the fact that the research was led by academics meant that it was also subject to university ethical clearance. Ethics approval was sought and obtained without difficulty for the case file analysis, court observations and interviews and focus groups. However, the original intention to interview children who had been the subject of child arrangements proceedings involving domestic abuse, for the purpose of understanding their experiences of the family court, was not completed due to difficulties in obtaining ethical approval.

The ethics committee took a very cautious approach to the inclusion of children in the research and made permission for the interviews conditional on specific requirements being put in place, including the interviews being conducted by a researcher specialised in working with children, with a CV to be submitted demonstrating their experience in interviewing children. Additional important questions, such as whether children would need the permission of both parents to participate in the research, were required to be addressed in a further ethics application. It was eventually decided that it would not be feasible to recruit a specialist researcher to lead this strand of the pilot, given the resources needed and the further delays it would cause. While this is not an issue unique to this project, the unfortunate effect was to exclude children's voices from the pilot – in a context in which the exclusion and silencing of children's voices was itself one of the problems identified by the Harm Panel and reflected in this report.

RECOMMENDATION 16

To ensure that the voices of children are included in phase two of the FCRRM, the DAC office should work with the Home Office or Ministry of Justice to identify an appropriate ethics process, meet necessary conditions and secure ethical approval in advance to enable children's participation.

Figure 2: Streamlined permissions process in accordance with recommendations



APPENDIX 1

Glossary, acronyms and initials

Glossary

'By and for' services

Organisations that design and deliver domestic abuse services 'by and for' people who are minoritised (including on the basis of race, disability, sexual orientation, transgender identity, religion or age). These services are rooted in the communities they serve, and may include wrap-around, holistic recovery and support that addresses a victim/survivor's full range of needs, beyond purely domestic abuse support.

Cafcass England and Cafcass Cymru (Children and Family Court Advisory and Support Service)

Cafcass England and Cafcass Cymru independently advise and prepare reports for the family court about the best interests of children in court proceedings in England and Wales respectively. In cases in which a children's guardian is appointed to act in proceedings, the guardian will be from Cafcass England or Cafcass Cymru.

Case law

Law that is established through decisions made by judges in individual cases. Usually this involves clarifying how existing laws should be interpreted and applied.

Child arrangement order

Under s8 of the Children Act 1989 a child arrangement order specifies

- Where a child will live.
- When a child spends time with each parent.
- When and what other types of contact will take place (e.g. phone calls).

Child Impact Report

Where an application is made to one of the Pathfinder Courts, Cafcass or Cafcass Cymru will receive a copy of the application and prepare a Child Impact Report detailing what is happening for the child and their family that has brought them to court. This is more extensive than a safeguarding letter (see below) and involves (where possible) consulting with the child as well as with professionals and services that have had contact with the family, and the results of domestic abuse risk screening conducted by an independent domestic abuse service working with the court.

Coercive and controlling behaviour

Coercive behaviours are an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that are used to harm, punish, or frighten their victim. Controlling behaviours are actions used to make the person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour. They are forms of domestic abuse, and a course of conduct offence under the Serious Crime Act 2015.

Domestic abuse

This report uses the statutory definition of domestic abuse in the Domestic Abuse Act 2021. The full legislative definition is available at: www.legislation.gov.uk/ukpga/2021/17/contents

In summary, domestic abuse occurs where two people are over 16 and personally connected to one another and one person's behaviour is abusive to the other. Abusive behaviour can include:

- Physical or sexual abuse.
- Violent or threatening behaviour.
- Controlling or coercive behaviour.
- Economic abuse.
- Psychological, emotional or other abuse.

The Domestic Abuse Act 2021 states that where a child has seen, heard, or experienced the effects of domestic abuse, they are a victim of the abuse in their own right.

Fact-finding hearing

A type of hearing in the family court in which the court hears evidence and makes a decision on specific facts that are in dispute, where it is necessary to decide those facts in order to determine what is in the best interests of the child. In private law children's cases, fact-finding hearings may be held to decide on contested allegations of domestic abuse, in accordance with Practice Direction 12J (see below).

Family Court

The family court deals with matters concerning family relationships, including post-separation parenting arrangements, orders providing protection against domestic abuse, and financial separation following divorce.

The family judiciary is made up of lay magistrates and district judges (Magistrates Court), district judges, circuit judges and high court judges. Which level of judiciary a case is allocated to will depend on its complexity. The Family Court is based at 43 local centres (each presided over by a 'Designated Family Judge') and at the Royal Courts of Justice in London.

As with all judges, in accordance with the principle of judicial independence, family court judges and magistrates are independent of government. Neither the government nor the Domestic Abuse Commissioner can intervene in individual cases.

Family Court leadership

The family court is led by the President of the Family Division, currently Sir Andrew McFarlane.

The national lead judge for private family law and for domestic abuse is currently Mrs Justice Gwynneth Knowles.

Family Justice Board

The Family Justice Board is a ministerial-led cross-government board made up of family justice sector leaders, set up to improve the performance of the family justice system.

Harmful Practices

The National FGM Centre describes Harmful Practices as: Persistent practices and behaviours that are grounded on discrimination on the basis of sex, gender, age and other grounds as well as multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering, such as Forced Marriage and Female Genital Mutilation.

Independent Domestic Violence Advisor (IDVA)

As defined in the Victim's Code, IDVAs work with victims of domestic abuse to understand their experiences and their risk of ongoing harm. They will develop an individual safety plan with a victim to ensure they have everything they need to become safe and start to rebuild their lives free from abuse. This plan may include supporting victims to access statutory services (such as health care and housing services), representing their voice at a Multi-Agency Risk Assessment Conference (see below) and accessing other voluntary services in their communities. IDVAs are independent of statutory services and are able to provide victims with relevant information and advice tailored to their needs

Intersectional barriers

Intersectionality is a term coined by US critical race feminist Kimberlé Crenshaw. It was originally used to describe Black women's experiences of interlocking racism and sexism. It provides a framework to challenge the idea that parts of a person's identity are experienced as discrete categories and allows the naming of oppression through intersections of multiple structural inequalities. For more see: Kimberlé Crenshaw on Intersectionality, More than Two Decades Later | Columbia Law School

Local authorities/social services

Families involved in private law children's cases may have had previous contact with local authority children's services. If a local authority is currently or was recently involved with a family, they may be asked to advise the court instead of Cafcass / Cafcass Cymru (see above).

Local Family Justice Boards

Local Family Justice Boards exist at a local level to support the work of the national Family Justice Board by bringing together the key local agencies, including decision makers, front-line staff and lawyers, with the aim of driving improvements in the performance of the family justice system in their local areas.

Mediation

A process in which an independent, professionally trained mediator helps couples to work out arrangements for children and finances following separation, without going to court.

Mediation Information and Assessment Meeting (MIAM)

Prior to engaging in mediation, each individual will have a separate appointment with the mediator to set out the nature of their family dispute, and to learn about options for resolving it. Before applying for a child arrangement order under s8 of the Children Act 1989, the prospective applicant must attend a MIAM or provide justification as to why mediation is not suitable for their case. One of the possible justifications is where domestic abuse is evidenced.

Minoritised communities

Minoritised communities are those which have been othered and defined as minorities by the dominant group. They may face structural discrimination on the basis of protected characteristics, in particular race, religion, disability, sexual orientation, transgender identity or as part of the Deaf community. Those within these communities who hold multiple intersecting identities may face even greater marginalisation and further barriers to accessing support.

Multi-Agency Risk Assessment Conference (MARAC)

A professionals' meeting which includes attendees from the police, probation, health, social services, housing, IDVAs and other specialist statutory and voluntary sectors. The purpose of the meeting is to share information and knowledge about victims of domestic abuse and the perpetrators where the victim is assessed to be at high risk of death or serious harm from the perpetrator. The professionals will look at how to increase safety for the victim and put together a plan of how they will do this.

Non-Molestation Order

A non-molestation order is an injunction made by the court under the Family Law Act 1996 to protect victims/survivors and any relevant children from abuse or harassment. The police can arrest the perpetrator of abuse for breach of a non-molestation order.

Occupation Order

An occupation order is made under the Family Law Act 1996 and states who should live in the family home or how the family home can be shared. It can also exclude a perpetrator from the surrounding area.

Pathfinder Courts

An alternative approach to child arrangement proceedings that is being piloted in a number of courts in England and Wales. The court takes a problem-solving rather than adversarial approach to the family issues being experienced by the child/children and provides additional support to those who need it, such as survivors of domestic abuse.

Parental Responsibility

The powers and responsibilities that a parent has in relation to their child, including day-to-day and longer term decision-making.

Practice Directions

A practice direction is a direction issued by the President of the Family Division which sets out the way the Family Court should deal with particular procedural issues in family cases. They form part of the Family Procedure Rules.

Practice Direction 12J

This is the practice direction which sets out how the family court should deal with cases where there are allegations of domestic abuse.

Private law children's cases

Where separating parents cannot agree on contact or other arrangements for their children, such as where children should live, they can make an application to the family court under s8 of the Children Act 1989. The court is then asked to decide the aspects of child arrangements that are in dispute.

Prohibited Steps Order

One of the orders that the court can make under s8 of the Children Act 1989, which prohibits a parent from doing something in relation to the child, e.g. to prevent a parent removing a child from the country.

Qualified Legal Representative Scheme (QLR)

The Domestic Abuse Act 2021 prohibits or allows the court to prevent perpetrators of domestic abuse from cross-examining their victims in the family court. Victims can also be shielded from having to cross-examine their perpetrators. In either situation, the court can appoint a qualified legal representative to conduct cross-examination on behalf of the relevant party, if they do not have their own legal representation.

Safeguarding letter

When an application is made to the family court for a child arrangements order, a copy of the application is first sent to Cafcass to prepare a safeguarding letter. The assigned family court advisor will attempt to hold a telephone conversation with each parent and consult with the police and local authority for any history relating to the family. They will then write a short report for the court setting out the results of these enquiries, outlining any safeguarding or welfare concerns for the child/children, and making any recommendations as to how the court should proceed, which should be available to the court for the first hearing. The same procedure was followed by Cafcass Cymru prior to the full rollout of Pathfinder Courts in Wales (see above).

Scott Schedule

A table used in preparation for an fact-finding hearing to set out the precise allegations of domestic abuse that the court needs to decide on, and the alleged perpetrator's response to them. The table typically itemises individual incidents (including dates) and can therefore have the effect of disaggregating and decontextualising a pattern of abusive behaviour.

Section 7 report

The court can order a report under section 7 of the Children Act 1989 when they want further information about the child/children's welfare. This is usually prepared by a Cafcass/Cafcass Cymru family court advisor, unless the family is currently engaged with the local authority children's services, in which case their designated social worker will be asked to prepare the report. The report provides a detailed assessment of welfare issues and recommendations as to what living and contact arrangements are in the child/children's best interests. As part of the assessment the family court advisor or social worker, if appropriate, should speak to the child/children to understand their wishes and feelings.

Section 37 report

If the court is concerned that a child may be at risk of significant harm from their parents or carers, they can order a report under section 37 of the Children Act 1989. The Local Authority is asked to investigate the child's circumstances and whether they should apply for a Care or Supervision Order to safeguard the child's welfare. The local authority can also suggest what help they can provide to the family to promote the child's welfare.

So-called 'honour'-based abuse

Karma Nirvana describes so-called 'honour'-based abuse as: Any incident or pattern of controlling; coercive; manipulative; intimidating; or threatening behaviour, violence, or abuse perpetrated by one or more family, extended family, and/or community members and/or current/former intimate partners in response to perceived or alleged transgressions of accepted behaviours. While most often perpetrated against women and girls, anyone can experience so-called 'honour'-based abuse regardless of age, ethnicity, sexuality, religion, or gender, including men and boys. It can encompass but is not limited to: Psychological, emotional, physical, sexual, spiritual and faith-related, economic, financial, and hate-aggravated abuse; forced marriage; female genital mutilation; abduction; isolation; threats; murder; and other acts of domestic abuse. People living in the context of an honour dynamic face additional barriers to their ability to speak out against and report abuse for fear of repercussions including further and more severe abuse, shame, stigma, and being shunned/ostracised.

Specific Issue Order

An order the court can make under s8 of the Children Act 1989 to determine a specific question about a child's upbringing, e.g. what school they should go to, or whether they should have a religious education.

Special Measures

Under Part 3A of the Family Procedure Rules and Practice Direction 3AA, the court can order 'special measures' (also known as 'participation directions') to enable a victim/survivor of domestic abuse, and any other participant who is considered vulnerable, to participate effectively and to give their best evidence during proceedings. Examples include giving evidence behind a screen, attending court remotely, having a separate, secure waiting room at court and advanced viewings of the court.

Specialist domestic abuse services

Specialist domestic abuse services provide lifesaving support to victims and survivors of domestic abuse, including counselling, safety planning, advocacy, and refuge spaces. These services often work in partnership to improve the response of public agencies like the police or health services and, crucially, offer an independent and specialist service with the needs of victims and survivors at their heart.

Trauma informed practice

Trauma-informed practice is an approach to service provision that is grounded in the understanding that trauma exposure can impact an individual's neurological, biological, psychological and social functioning. It seeks to work in collaboration and partnership with people who have been traumatised and empower them to make choices about their health and wellbeing and improve safety and access. A key aim is to prevent retraumatisation, which is the re-experiencing of thoughts, feelings or sensations experienced at the time of a traumatic event or circumstance in a person's past.

Victims and survivors

We use this term to encapsulate both the legal framing of people who are subject to domestic abuse ('victims') and to account for the individual preferences of adults who have experienced domestic abuse ('survivors').

Acronyms and initials

ABE
Achieving Best Evidence (used as good practice in criminal proceedings when interviewing victims and witnesses)

Cafcass / Cafcass Cymru
Children and Family Court Advisory and Support Service in England/Wales

CAO
Child Arrangement Order

CAP
Child Arrangements Programme

CCD
Core Case Data system

CMH
Case Management Hearing

DAPP
Domestic Abuse Perpetrator Programme

DFJ
Designated Family Judge

DRA
Dispute Resolution Appointment

FCA
Cafcass/Cafcass Cymru Family Court Adviser

FCRRM
Family Court Reporting and Review Mechanism

FHDRA
First Hearing Dispute Resolution Appointment

FFH
Fact finding hearing

HMCTS
His Majesty's Courts and Tribunals Service

IDVA
Independent Domestic Violence Adviser

ISVA
Independent Sexual Violence Adviser

LGBTQ+
Lesbian, Gay, Bisexual, Transgender, Queer / Questioning and anyone who identifies as part of this community

LIP
Litigant in Person

MARAC
Multi-Agency Risk Assessment Conference

MIAM
Mediation Information and Assessment Meeting

MoJ
Ministry of Justice

NFA
No Further Action (following a police investigation)

NMO
Non-Molestation Order

PD
Practice Direction

PSO
Prohibited Steps Order

PTR
Pre-Trial Review

QLR
Qualified Legal Representative

SIO
Specific Issue Order

ANNEX 1

Methodology and approvals

The main body of the report describes and reflects on the methods used and the processes of gaining permissions to conduct research in the family court. This annex provides further detail of the FCRRM pilot methodology and approvals processes.

1. Court site selection

The three court sites involved in the FCRRM pilot were chosen by reference to both demographic variables and court-related factors. The following table sets out the specifications used to identify the desired combination of sites for the pilot.

Demographic variables	Ethnicity and immigrant status	At least one of the courts should be located in an area with a high multicultural, immigrant population
	Population and service density	At least one court should be located in a metropolitan area and one in a semi-urban/rural area.
	National representation	At least one court should be in Wales.
	Socio-economic status	At least one court should be located in an area of high multiple deprivation and one in an area of relatively low deprivation.
Court-related factors	Use of e-files vs paper files	E-files would be preferable as retrieval and access will be easier than for paper files; and for piloting purposes, files will increasingly be presented in this format in future.
	Court facilities	Ideally, the pilot courts should have varying levels of safety facilities and/or court support services (e.g. a Support Through Court office) in order to test the difference these make to abuse survivors coming to court.
	Throughput	The court has more than 100 private law children files closed in the period 1 January - 31 December 2023 from which to select a sample.
	Court and Cafcass/ Cafcass Cymru commitment and capacity	Designated family judges, court managers and Cafcass/Cafcass Cymru service managers of the pilot courts should be supportive of and willing to facilitate the research, and have the capacity to do so. Courts involved in other current pilot processes should be avoided.

The three sites were selected in consultation with the FCRRM Operational Advisory Board and the President of the Family Division's Office. The judiciary asked the research team to exclude court areas that were currently dealing with a significant backlog of cases and/or were already facilitating national research or other pilots including Pathfinder, as facilitating the FCRRM pilot could potentially overburden these sites. The final sites selected met most of

the selection criteria. One site was in an area of high multiple deprivation, while the other two sites were in areas with pockets of high deprivation in some parts and relative affluence in other parts. One site hosted a Support Through Court office in the court building.

2 Overview of Methods

The design for the pilot proposed a mixed methods qualitative and quantitative approach, to include:

- A contextual overview of the court site.
- A review of a sample of closed case files.
- Observation of hearings.
- Interviews with judges, magistrates and Cafcass/Cafcass Cymru officers.
- Interviews with children who had experienced domestic abuse and been the subject of Family Court proceedings.
- Focus groups with survivor and perpetrator parents with experience of the family court.
- Focus groups with marginalised and minoritised survivors.

Most of these strands were completed, however, for reasons explained below, there were no focus groups with male survivors or perpetrators and no interviews with children.

3 Contextual overview

The contextual overview was intended to provide insights into the court personnel and facilities.

When on site conducting observations, the researchers completed a 'walk through' of each court, noting facilities such as routes into and within the building, waiting areas, court rooms, private rooms, and professional facilities. Members of the research team also had informal conversations with court staff, enabling them to gain insight into the culture and practices of each court.

Contextual information gathered from the courts, included:

- Court staffing: full-time and part-time judges, legal advisers and magistrates.
- Safety and security facilities available to protect vulnerable parties and witnesses, and how parties could arrange for their use.
- How the QLR scheme was operating.
- How interpreters were requested and arranged.

This information was valuable in understanding and analysing the observations of hearings, court files, interviews and perspectives of survivors.

4 Case files

4.1 Sample criteria and method

The file sample consisted of closed files to enable the full process, outcome and duration of each case to be determined, to provide some time (albeit a relatively short period) post-proceedings to identify any returns to court, and to enable all cases in the sample to be meaningfully compared with each other and aggregated.

The researchers aimed to analyse 300 case files involving applications for orders under section 8 of the Children Act 1989. Due to delays in obtaining permissions and accessing files, the ultimate time period from which files were sampled were those closed during the 12 months from January to December 2023. The time period was chosen to:

- Ensure a reasonable choice of courts with sufficient files available to be sampled.
- Capture cases closed relatively recently, but post-lockdown, so that most would have included at least one face-to-face court event.
- Identify the impact of amendments to the Family Procedure Rules (FPR), Practice Direction 3AA (PD3AA) and Practice Direction 12J (PD12J) in October 2021.
- Identify the impact of the prohibition of direct cross-examination under section 65 of the Domestic Abuse Act 2021 and Practice Direction 3B (PD3B), which came into effect on 21 July 2022.

The case file sample was stratified as follows:

- 100 files from each court, to provide a sufficiently large sample from each court to enable statistical comparison.
- 50 of those files in each court were drawn from cases finalised at Tier 1 (magistrates) and 50 were drawn from cases finalised at Tier 2 or 3 (district judges and circuit judges), to enable sufficient examination of cases assessed to be less or more serious or complex.

The sampling criteria were provided to HMCTS analysts who randomly selected case IDs on Family Man from among all cases closed at the relevant level within the specified period.

4.2 Case file sample

The final sample consisted of 298 case files with breakdowns as follows:

Court	Magistrates	Judges	TOTAL	Closed in period Mags (sample %)	Closed in period Judges (sample %)	Total closed in period (sample %)
City	50	50	100	293 (17%)	389 (13%)	682 (15%)
Mixed	50	49	99	396 (13%)	395 (12%)	791 (13%)
Small towns/ rural	47	52	99	168 (28%)	139 (37%)	307 (32%)
Total	147	151	298	857 (17%)	923 (16%)	1780 (17%)

Two of the files included in the random sample were unable to be located, resulting in a final sample of 298 cases. Several cases were reallocated to a different tier during proceedings, which explains the discrepancy between the target and ultimate sample in one of the courts.

4.3 Data collection from case files

The courts in the pilot all used e-files, which meant that the researchers based at the Office of the Domestic Abuse Commissioner could access them remotely through Ministry of Justice laptops and servers, reducing the burden on courts to facilitate access.

Data was gathered using a pro forma survey consisting of mainly closed questions, with open text boxes for 'other' responses or further explanations. The survey was constructed on a SmartSurvey Platform to which only the two researchers undertaking the data extraction had access.

The survey instrument was initially piloted on a small sample of case files which were coded by several different researchers. The whole research team then reviewed the answers and the experience of using the survey, and subsequently clarified, added or cut some items.

The file analysis pro forma was designed to collect:

- Basic quantitative data from all files.
- Any evidence of prior or concurrent criminal, Family Law Act or financial proceedings involving the same parties, local authority involvement with the family, and prior child arrangements proceedings.
- Detailed quantitative data on the process followed in cases raising allegations of domestic abuse.
- Qualitative data on domestic abuse cases.

Additionally, the file analysis enabled the research team to scope the extent to which information required for the FCRRM on the implementation of PD12J, PD3AA, PD3AB and s.91(14) of the Children Act 1989 is likely to be available on court files.

Access to linked criminal files was not possible. This would have involved separate data sharing agreements with the police and CPS.

Most case files were coded by a single researcher. To monitor interrater reliability, 5% of cases in the overall sample (five per court area; 15 cases in total) were reviewed by two researchers. Following coding and analysis, the researchers held debrief meetings to compare their coding of and overall impressions of each file. Interrater reliability was generally very good. Across the 15 cases, the consistency between the coding of researchers ranged from 93% to 97%; with consistency generally being higher for shorter and less complex cases. The researchers also kept a log of inconsistencies in coding and interpretation with the aim of utilising it to further refine the survey tool for future iterations of the FCRRM. The level of detail in the pro forma meant that data extraction took some time, particularly on larger files. Some of the detail proved unnecessary and will be omitted in future, but on balance, the detail was successful in yielding a step-by-step picture of how domestic abuse cases are dealt with in the family courts, as seen in Part A of this report.

5 Court Observations

The observations of court proceedings were designed to see the law in action at a granular level, including the implementation of practice directions and guidance, verbal and physical interactions between parties and professionals, and how parties reacted to the court process, none of which is captured in court files. They enabled the triangulation of interview and focus group data, evaluating what people said about the court process or their practices against observed actions and reactions. This component of the pilot was also designed to aid identification of best practices in action, as well as offering explanations for patterns identified in the files and an understanding of the extent to which observations of hearings might usefully contribute to the FCRRM.

5.1 Sampling criteria and method

The researchers spent two weeks at each court observing hearings in the period between March and June 2024. Two to three researchers were on site to conduct observations most of the time, although on some days there was only one researcher present due to unforeseen illness. In one of the courts, researchers returned for three days outside the original two-week period, to observe an FFH which had not been held within the initial window. During this three-day window, the researchers also observed four FHDRA's, one directions hearing and two DRA's.

The team aimed to observe a range of different hearing types as well as cases before both judges and magistrates. In two of the courts, judges and magistrates sat in the same building while in the third they sat in different buildings located 5-10 minutes' walk apart. At one of the courts, FHDRAs were being heard exclusively at a different court in the DFJ area, and the researchers travelled to that court to observe FHDRAs. Hearings taking place remotely or in hybrid form were also observed, depending on the general practice at the relevant court.

Since private law children cases are heard in closed court, it was necessary to obtain the consent of both the judge or magistrates and the parties in order to observe any hearing. The research team did not encounter any difficulties in this regard; no parties, judges or magistrates refused their consent. Information leaflets about the research were provided to the judiciary in each court in advance of the research visits, explaining the purposes of the research, how the participants' anonymity and confidentiality would be protected, and the freedom of anyone to decline to participate if they chose. At the commencement of the hearing, the judge, legal adviser or bench chair would note and explain the researchers' presence and seek the parties' consent for them to remain. Parties were assured that the observers were focusing on the court process and that any details of their case would be anonymised in reporting.

Assistance was required from the court listing office at each site to identify suitable hearings for observation. A mixture of purposive and convenience sampling was employed, whereby researchers obtained weekly listings from the court and planned to attend a selection of different types of hearings, including FHDRAs, DRAs, FFH's and final hearings. On some days, it was not possible for researchers to attend all child arrangements hearings listed. In such instances they prioritised attending hearing types that had thus far been under-represented in the observation sample for that site.

The final observation sample consisted of 95 child arrangements hearings across the three court areas. The table below shows breakdowns by court and tier.

Court	Magistrates	Judges	TOTAL
City	10	16	26
Mixed	12	28	40
Small towns/ rural	15	14	29
Total	37	58	95

Although the original intention had been to prioritise cases involving allegations of domestic abuse, with some non-domestic abuse cases for contrast, it was not usually possible to determine in advance whether a case involved domestic abuse and so the researchers simply observed child arrangements cases as set out above. As noted in Part A of this report, 73% of hearings observed involved some issue of domestic abuse. In individual courts this ranged from 62% to 85%.

5.2 Data collection

A semi-structured observation protocol was used to ensure consistency of observations between researchers and courts, as well as enabling the observations to capture local differences and issues occurring in individual hearings. The pro forma included a mix of closed and open-ended questions to capture information about the hearing type and length, characteristics of parties and children, and who was present at court, as well as free-text boxes that the researcher could use to produce a running record of the hearing and to summarise the issues concerned and practices observed.

The pro forma was initially piloted on a small sample of child arrangements hearings at a different court, facilitated by a member of the Operational Advisory Group. This enabled the researchers to gain some familiarity with court hearings, and the research instrument to be refined and clarified, prior to the observations proper taking place. As with the file data survey, the observation pro forma was reviewed again at the conclusion of data collection with a view to refining it for future use.

6 Interviews with court professionals

The research team planned to complete semi-structured interviews with 8 professionals at each court site – three judges, three magistrates and two family court advisers about their experiences of addressing domestic abuse within their caseload. The aim of the interviews was to understand views and practices in relation to domestic abuse cases, as well as barriers and facilitators to addressing domestic abuse effectively.

6.1 Sampling criteria and method

Judges and magistrates were recruited in the course of conducting observations at each court. In some cases, administrative staff at the court helped the researchers to identify suitable professionals, while in other instances the researchers directly approached judges and magistrates they had met while observing in court. The sample consisted of nine judges and seven magistrates.

The research team obtained permission from Cafcass and Cafcass Cymru to interview two FCAs at each court site, and interviewees were put forward by the relevant organisation. The four interviewees identified by Cafcass England were all specialised in writing section 7 reports rather than undertaking work to first hearing (safeguarding enquiries). Consequently, interview data from Cafcass England contained little regarding the safeguarding process. The two interviewees identified by Cafcass Cymru undertook both safeguarding enquiries and section 7 reports.

The FCAs interviewed were very knowledgeable about domestic abuse and good practices. However, often the practices and attitudes they described differed from what the research team observed in court hearings and read in case files. This difference suggested that the interviewees may have been more knowledgeable about domestic abuse than most FCAs and may have not been representative of FCAs in general.

6.2 Data collection

Professional interviews were semi-structured, using a standardised discussion guide. The guide contained questions which explored professional attitudes toward and knowledge of domestic abuse as well as practices commonly implemented in domestic abuse cases. Where relevant researchers probed answers to elicit further information. Interviews were conducted either in person at court during the observation period, or online via Microsoft Teams shortly afterwards. Interviews were recorded and transcribed for analysis.

7 Focus groups and interviews with survivors

Focus groups with domestic abuse survivors aimed to provide rich data about parties' experiences of the family court process and what happened after proceedings concluded. The researchers aimed to conduct nine focus groups – three in each area – with each group involving 4-8 survivors.

Focus group recruitment was facilitated by local l domestic abuse support services to ensure appropriate preparation and care for participants, and in compliance with conditions for ethical approval. Groups were co-facilitated by a member of staff from the relevant support service and run by a member of the research team. Services were given information about the research and asked to recruit participants who were currently experiencing or recently had experienced private law children's proceedings and identified as being survivors of domestic abuse. One focus group was facilitated by a 'by and for' service that specialised in supporting survivors and those at risk of 'honour'-based abuse and all harmful practices. Support services were offered reimbursement for venue hire and staff time. Survivors were given a £40 voucher as a thank you for participating.

In total, six focus groups with women survivors were held; three in the city area, two in the mixed area and one in the small towns/rural area. The size of groups varied from three to ten participants. The overall total was 35 participants, of whom around half were from the city area and half from the other two areas combined. Six Independent Domestic Violence Advocates (IDVAs) and Domestic Abuse Support Workers attended the groups to support survivors and also contributed to the discussion. Four groups were conducted in person, while two were conducted online to achieve higher rates of participation.

All survivors in the focus groups lived in the pilot court areas, however, some may have attended a family court outside the area. Therefore, some of the content discussed in groups may have related to other family courts, although the experiences they described were similar.

7.1 Characteristics of focus group participants

The researchers recorded quantitative data on the characteristics of survivors who participated in focus groups, as well as details of their cases, as set out in the following tables.

Demographics	Category	Number
Relationship to child/children	Mother	34
	Grandmother	1
Age	25-68, median 38	
Ethnicity	White British	25
	Black African	2
	Asian – Hong Kong	1
	Asian – Indian / Pakistani / Bangladeshi	3
	Mixed – White British and Pakistani	1
	Unknown	3
Sexual orientation	Heterosexual	27
	Bisexual	3
	Lesbian	2
	Unknown	3
Disability/health issues	Mental health diagnosis	11
	Physical health/disability	4
	Learning difficulty/ disability	1

Court experience	Category	Number
Length of time in private law proceedings	5 months – 15 years	
Most recent proceedings	Ongoing	10
	Ended	22
	Unknown	3
Previous proceedings in family court		10
Attended MIAM or mediation		11
Legal representation	Self	28
	Other party	24
Legal aid	Self	24
	Other party	10
Accompanied to court	DA support worker	15
	Family member or friend	8
	McKenzie Friend	1

The proportions of focus group participants who had legal representation, legal aid, and a support worker, family member or friend accompanying them to court were higher than those found in court observations and case file analysis in the three court areas. This difference can be explained by the fact that the survivors in focus groups were in contact with support services and were, therefore, more likely to be signposted to legal aid if eligible and to be able to access support for their court proceedings.

7.2 Interview with male survivor

An online interview was carried out with a male survivor who had experience of domestic abuse and of being a father in ongoing family court proceedings. This had initially been planned as part of a focus group, however, it became an interview after only one respondent turned up to the scheduled group. The interview was facilitated by a national service that specialised in supporting male victims, and the survivor's IDVA was also present during the interview.

7.3 Data collection

A semi-structured discussion guide was used for the focus groups and male survivor interview. The guide contained questions which explored survivors' experiences of the family court, practices relating to domestic abuse, and the impact on them of court proceedings. Where relevant, researchers probed answers to gather more nuanced data.

Given the sensitive and potentially triggering nature of the topic of discussion, the research team took steps to ensure that the interview process was trauma informed, i.e. it was sensitive to the impact of trauma and risk of re-traumatisation, and aimed to create an environment where survivors experienced feelings of safety and choice. Survivors were informed that they could withdraw from participation or take a break at any point, and the researchers took time to check in with the survivors and build rapport at the start of the discussion. Additionally, co-facilitation with support services ensured that a member of staff was on hand to support survivors if they became distressed during the group and could also offer to debrief with survivors afterwards. To ensure the sensitivity of research materials, the guide was reviewed by members of staff at the Domestic Abuse Commissioner's Office who had a background of frontline experience with survivors.

To ensure that survivors' voices were accurately represented in the interpretation of findings, the research team wrote a summary of each group and sent it back to survivors to review.

8 Uncompleted Strands

The following strands of the intensive court study were planned but were either not completed or were only partially completed due to hurdles encountered obtaining ethical permission and issues with recruitment.

- Interviews with children with experiences of domestic abuse and the family court in the three court areas.
- Focus group with perpetrators of domestic abuse with experience of the family court.
- Focus group with male survivors with experience of the family court.
- Focus group with LGBTQ+ survivors.

8.1 Interviews with children

As discussed in Part B of the report, initially the design included a small number of interviews with children, to be arranged via survivors accessing support services. Children's accounts of the impact on them of domestic abuse, court proceedings and court orders is an important component of the FCRRM. The plan was to gather data and test a method, based on an age appropriate, specialist interview process. The university ethics committee with oversight of the research required, that a researcher with experience of interviewing children be recruited, and the planned research tools be approved by the ethics committee. The research team was unable to recruit a suitable person in time for the tools to be developed and interviews to be completed before the end of the pilot.

8.2 Focus groups with perpetrators

The researchers gained ethical approval to conduct a focus group with perpetrators of domestic abuse, however, this was unable to be held due to difficulties with recruitment. Following the decommissioning of Domestic Abuse Perpetrator Programmes (DAPPS) by Cafcass, the research team found it difficult to identify appropriate services that could assist with recruitment of relevant participants. Services contacted were reticent about contributing to the pilot, due to concerns about the safety of researchers, participants and staff.

8.3 Focus group with male survivors

As noted above, a focus group with male survivors was scheduled by a national support service that specialised in this area. While one survivor attended, most potential participants dropped out of the group or did not attend, resulting in limited data exploring the experiences of male survivors in the family court.

8.4 Focus group with LGBTQ+ survivors

The research team attempted to liaise with local and national specialist services that support LGBTQ+ survivors to set up a focus group. However, the team were unable to arrange a focus group within the timescales of the pilot and, therefore, LGBTQ+ survivors are not adequately represented in the research. However, a minority of participants in the general focus groups identified as being LGBTQ+, meaning that there was some limited representation.

9 Data Analysis

9.1 Quantitative data analysis

Quantitative data gathered from files and observations was entered into a Microsoft Excel spreadsheet and, after being checked for errors, was uploaded to a Statistical Package for Social Sciences (SPSS) database. This is a commonly used computer-aided data analysis package which enables the generation of various forms of statistical outputs. For this project, the research examined:

- Descriptive statistics – counts of the incidence of individual variables, such as the number and proportion of all cases in the sample that included allegations of domestic abuse
- Cross tabulations – showing how the incidence of individual variables varied by reference to other categories of analysis, such as the number and proportion of cases in the sample that included allegations of domestic abuse by court and/or by judicial tier; the number and proportion of fact-finding hearings that related to different types of domestic abuse; or the number and proportion of unsupervised contact orders made in cases with and without allegations of domestic abuse.

- Tests for the significance of associations between two variables – for example, if a cross-tabulation showed that the proportion of cases involving different types of domestic abuse varied between judicial tiers, was this a small, normally expected variation, or can we say there was a statistical relationship between the two factors, which might indicate that decisions about allocation to tiers were related to the type of abuse alleged?

9.2 Qualitative data analysis

Thematic analysis was used to analyse the qualitative data. The case observations, interviews and focus group transcripts were all coded to identify topics, ideas and issues that came up repeatedly. Each commonly repeated content was given a code, which was then applied to all the qualitative data, with similar codes being grouped together into bigger themes.

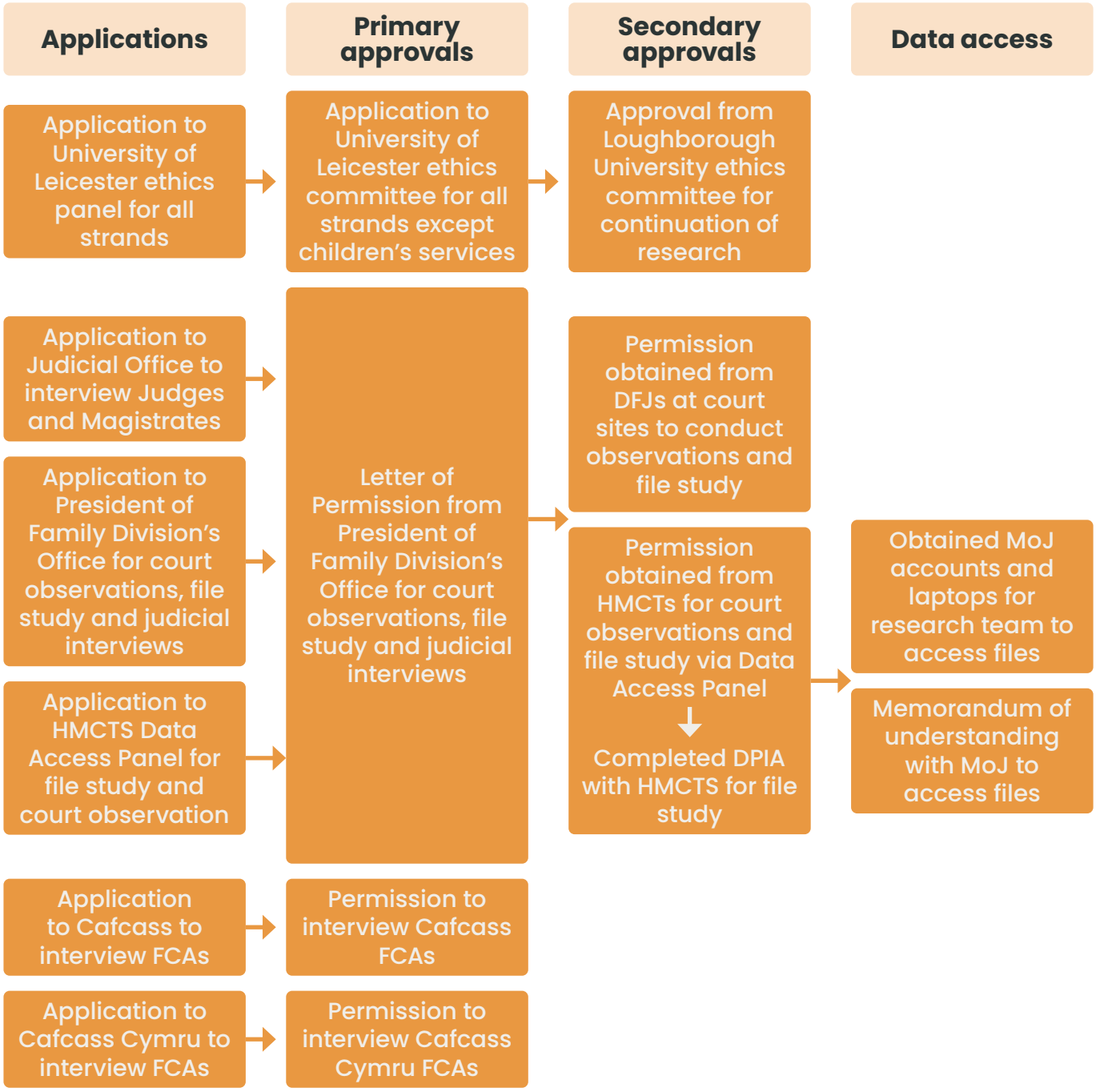
The research team collectively discussed the themes emerging from the qualitative data and agreed that many of the findings of the Harm Panel were replicated in the data gathered for the FCRRM pilot. The data was then recoded by reference to the Harm Panel themes, and grouped together into separate documents for each theme. Sub-themes were identified within each document and material grouped together into sub-themes for the writing of the report. Good practices observed and suggested by professionals and survivors were compiled into an additional document, with sub-themes further identified for the purpose of writing.

10 Ethical clearance and permissions required for the intensive court study

Numerous ethical approvals and permissions were required before commencing the intensive court study. It took over 10 months from the inception of the FCRRM pilot in October 2023 to obtain the necessary permissions, which was substantially longer than originally planned. The table below lists all the required permissions and when they were obtained.

Strand of research	Panel/Institution granting permission	Documents submitted	Form of agreement/ permission	Date obtained
All components of intensive court study	Research Ethics Committee	Written application University of Leicester application and approval documents	Written confirmation for all components other than child interviews	October 2023
	Loughborough University Ethics Review Sub-Committee		Written confirmation of favourable ethical opinion	July 2025
Interviews with Cafcass Cymru Family Court Advisers	Cafcass Cymru Research Advisory Committee	Written application	Written confirmation	January 2024
Judicial interviews	Judicial Office (President of the Family Division)	Written application	Letter of permission	March 2024
Case file access and court observations	President of the Family Division	Written application	Letter of permission	March 2024
Court observations	HMCTS Data Access Panel	Written application, President's letter of permission, Data Protection Impact Assessment	Written correspondence granting permission	March 2024
Observations at individual court sites	Designated Family Judge for each court	Information about the research, President's letter of permission	Written confirmation	March 2024
Interviews with Cafcass Family Court Advisers	Cafcass Research Advisory Committee	Written application	Written confirmation	June 2024
Access to case files via Ministry of Justice accounts and laptops	Ministry of Justice	Data Protection Impact Assessment, President's letter of permission, Data Access Panel approval	Bespoke memorandum of understanding (MoU) to access case files between DAC Office, HMCTS and MoJ	August 2024

Some approvals were dependent on other approvals being in place. For example, gaining approval from the individual court sites and from HMCTS for the case file study and court observations was dependent upon the President of the Family Division first approving the research. The graphic below illustrates which approvals were 'secondary' due to their dependency on another permission being granted.



Delays in obtaining permissions and access significantly impacted the original timescales proposed for the FCRRM. The project was initially planned to take place over a 12-month period, beginning in October 2023 and ending in September 2024. However, delays in obtaining permissions and access, particularly in obtaining access to case files, added an extra year to the project. Part B of the report discusses the various causes of delay and makes recommendations for preventing such delays in future.

End notes

1. Hunter, R., Burton, M. and Trinder, L. (2020). *Assessing Risk of Harm to Children and Parents in Private Law Children Cases* (London: Ministry of Justice): Assessing Risk of Harm to Children and Parents in Private Law Children Cases ('Harm Panel Report').
2. Barnett, A. (2020). *Domestic Abuse and Private Law Children Case: A Literature Review* (London: Ministry of Justice): Domestic abuse and private law children cases ('Harm Panel Literature Review').
3. Barnett, ibid. See also Hunter, R., Barnett, A. and Kaganas, F. (2020). 'Introduction: Contact and Domestic Abuse' in R. Hunter et al. (eds), *Domestic Abuse and Child Contact: International Experience* (Abingdon: Routledge) pp.3-14.
4. *Re L, V, M and H (Contact: Domestic Violence)* [2001] Fam 260.
5. PRACTICE DIRECTION 12J – CHILD ARRANGEMENTS & CONTACT ORDERS: DOMESTIC ABUSE AND HARM – Justice UK.
6. Ministry of Justice (2020). *Assessing Risk of Harm to Children and Parents in Private Law Children Cases Implementation Plan* (London: Ministry of Justice): Assessing Risk of Harm to Children and Parents in Private Law Children Cases – Implementation Plan.
7. PRACTICE DIRECTION 12B – CHILD ARRANGEMENTS PROGRAMME – Justice UK.
8. Private Law Pathfinder Pilot Courts were first established in Dorset and North Wales and began operating from February 2022. They have since been rolled out to other areas, but the majority of courts remain operating under the traditional CAP: MoJ (2025). Private Law Pathfinder Delivery Update.
9. Domestic Abuse Act 2021, s.3.
10. Domestic Abuse Act 2021, s.65; Qualified_legal_representative_appointed_by_the_Court_Statutory_guidance.pdf; Practice Direction 3AB – Prohibition of cross-examination in person in family proceedings under Part 4B of the Matrimonial and Family Proceedings Act 1984 – Justice UK.
11. Domestic Abuse Act 2021, s.63; Family Procedure Rules 2010 r.3A.2A; Practice Direction 3AA – Vulnerable Persons: Participation in Proceedings and Giving Evidence.
12. Cafcass (2025). Domestic Abuse Practice Policy.pdf; Cafcass Cymru Domestic Abuse - May 2025. Note that both of these were introduced after the research for the FCRRM pilot was conducted.
13. *Re H-N and Others* [2021] EWCA Civ 448.
14. *K v K* [2022] EWCA Civ 468.
15. Fact Finding Hearings and Domestic Abuse in Private Law Children Proceedings (May 2022).
16. Harm Panel Report (n 1) p.186.

17. Domestic Abuse Commissioner (2021). Improving-the-Family-Court-Response-to-Domestic-Abuse-final.pdf. See also, Domestic Abuse Commissioner (2023). *The Family Court and Domestic abuse: Achieving Cultural Change*: DAC_Family-Court-Report-_2023_Digital.pdf
18. Ng-Knight, T., Upadhyay, N. and Papaioannou, K. (2024). *Data in the Family justice system: what is available and to whom* (National Centre for Social Research) ('NatCen Report').
19. Sir Andrew McFarlane (October 2021). *Confidence and Confidentiality: Transparency in the Family Courts*.
20. NatCen Report (n 18) p.16.
21. There are a total of 101 court sites in England and Wales, divided into 43 Designated Family Judge (DFJ) areas, within seven regions (London, South East, South West, Wales, Midlands, North East and North West).
22. Specialist support is often of relatively short duration, so the fact that survivors were currently in contact with these services is indicative of their recent experiences of family court proceedings.
23. At the time the pilot was initiated, only two Pathfinder courts were in operation, which were undergoing their own separate evaluation. The process evaluation of the first two Pathfinder courts has now been published: Barlow, C. et al. (2025). *Private Law Pathfinder Pilot* (Ministry of Justice Analytical Services).
24. However, resource issues may be more pronounced in other courts excluded from this pilot due to lack of capacity to facilitate research and/or their participation in other pilots. See further Part B, section 13.3 and Annex 1 on site selection and representativeness.
25. These included grandparents, and aunts/uncles. Research funded by the Nuffield Family Justice Observatory (NFJO) is currently examining non-parent applications. See Cusworth, L. et al. (2023). *Uncovering private law: The Other 10%* (NFJO).
26. See further Part B, section 11 on administrative data collection. While Cafcass does collect some data not recorded by the family court, for example, on the characteristics of parties involved in private law proceedings, it does not publish data cases involving domestic abuse.
27. Harm Panel Literature Review (n 2) Table 4.1, p.20.
28. Aris, R. and Harrison, C. (2007). *Domestic Violence and the Supplemental Information Form C1A* (London: Ministry of Justice); 63%; Cafcass and Women's Aid (2017). Allegations-of-domestic-abuse-in-child-contact-cases-2017.pdf: 62%.
29. HMICA (2005). *An Inspection Undertaken Between October 2005 and March 2006 of the Children and Family Court Advisory and Support Service (CAFCASS) Concerning Private Law Front-line Practice*.
30. Walsh, K. (2025). 'The Failure to Recognize Continuing Harm: Post-Separation Domestic Abuse in Child Contact Cases, *Violence Against Women* 31(8), p.1,816.

31. Cafcass (2019). *Support with Making Child Arrangements Programme: Six Month Pilot Evaluation Report* (unpublished).
32. Harm Panel Report (n 1).
33. Domestic abuse was mostly mentioned in the course of hearings, although on some occasions it was mentioned by court professionals in informal conversations with the researchers about the case either before or after the hearing, sometimes by way of explanation as to why there would be a screen in use during the hearing.
34. This figure is consistent with comparable Australian statistics. In 2023-24, 83% of matters filed in the Federal Circuit and Family Court of Australia included allegations that a party had experienced family violence: FCFCOA, *Annual Report 2023-24*, p.19.
35. Physical abuse: chi-square=12.956, df= 1, p< 0.001; sexual abuse: chi-square=6.836, df=1, p=0.009.
36. *Re H-N and Others* [2021] EWCA Civ 448.
37. Chi-square=4.728, df=1, p=0.030.
38. There was variation between courts in the rate of reallocation, with one court reallocating only 6% of cases, less than half the rate of the other two courts (13-14%).
39. See further Barnett, A. (2024). 'Domestic Abuse, Parental Alienation and Family Court Proceedings' in M. Burton et al. (eds), *A Research Handbook on Domestic Violence and Abuse* (Cheltenham: Edward Elgar).
40. There was variation between courts, ranging from 14% to 22%, but the difference was not statistically significant.
41. Chi-square=13.112, df=2, p=0.001.
42. *Re H-N and Others* [2021] EWCA Civ 448.
43. Grieshofer, T. (2024). *Legal-Lay Discourse and Procedural Justice in Family and County Courts* (Cambridge: Cambridge Elements).
44. Grieshofer (2024) provides examples of judges and magistrates in different types of hearings not giving opportunities for the parties to expand on what they feel is relevant: ibid ch. 6.
45. See Thiara, R. and Gill, A. (2012). *Child Contact in the Context of Post-Separation Violence: Issues for Black and Racially Minoritised Women and Children* (NSPCC). Some of the South Asian women interviewed for this study did speak about abuse involving wider family members, and shame (personal and community) inhibiting help seeking, but experiences varied, with some receiving support from family and community to separate. Black women identified lack of trust in authority (based on racist experiences of policing) as a barrier to raising abuse in family courts.
46. Home - Support Through Court
47. CLOCK - Home Page

48. Focus Group not identified to preserve anonymity.
49. For example, Observation 9, in which the survivor's own lawyer minimised the abuse and told the magistrates the survivor did not need special measures because she was not "hostile".
50. See Galanter, M (1974). 'Why the Haves Come Out Ahead', *Law and Society Review* 9(1), 95.
51. See Walsh, K. (2023). 'The Gap Between Facts and Norms: Contact, Harm and Futility', *Child and Family Law Quarterly* 35, 27; Harm Panel Literature Review, pp.91–92.
52. *Re H-N and Others* [2021] EWCA Civ 448.
53. *K v K* [2022] EWCA Civ 468: *A v K* (Appeal: Fact Finding: PD12J) [2024] EWHC 1981 (Fam).
54. Fact Finding Hearings and Domestic Abuse in Private Law Children Proceedings
55. Between January 2024 to December 2024, only 7% of rape investigations resulted in a charge: Criminal justice system delivery data dashboard (2025) Crime recorded to police decision - CJS Dashboard
56. Chi-square=3.833, df=1, p=0.05.
57. *Re H-N and Others* [2021] EWCA Civ 448, paras. 49, 58(d).
58. Adversarial trial processes exacerbate trauma and are not conducive to eliciting the consistent narrative typically required by decision makers. See, for example, Ellison, L. and Munro, V. (2017) 'Taking Trauma Seriously; Critical Reflections in the Criminal Justice Process', *International Journal of Evidence and Proof* 21(3), p.183.
59. For example, *Re W* [2012] EWCA Civ 528; *MS v MN* [2017] EWHC 324 (Fam). Cf. *Re G (Children) (Supervised Contact)* [2023] EWCA Civ 1453.
60. For cases heard by magistrates, we recorded continuity of legal adviser rather than magistrates.
61. Chi-square=7.682, df=2, p=0.021.
62. Qualified_legal_representative_appointed_by_the_Court_Statutory_guidance.pdf
63. This was a widespread issue as indicated by the President of the Family Division, A View from The President's Chambers: July 2023 - Courts and Tribunals Judiciary, paras. 16–20; and judicial guidance on appropriate responses to the difficulties of appointing QLRs in *Re Z (Prohibition on Cross Examination: No QLR)* [2024] EWFC 22. In this case, 120 emails and phone calls were unsuccessful to appoint a QLR, and it was noted that cases should not be allowed to drift in an open-ended search for a QLR, with guidance on alternative approaches to be adopted to ensure the evidence is adequately tested. See also Speed, A., Richardson, K. and Donnelly, M. (2024).
64. 'From Policy to Practice: Critiquing the Implementation of the Domestic Abuse Advocacy Scheme in Family Proceedings from the Perspectives of Qualified Legal Representatives and Key Stakeholders', *Child and Family Law Quarterly* 36(3), p.193.
65. Harm Panel Report (n 1), pp.182–183.

66. For reasons explained in their Annual Report 2021/2022, Cafcass were unable to continue commissioning DAPPS on behalf of the MoJ: cafcass-annual-report-accounts-2021-2022.pdf, p.34.
67. Hester referred to this as the 'three planet model'; each planet (public family law, private family law and criminal law) operates independently and often inconsistently, with different priorities: Hester, M. (2011) 'The Three Planet Model: Towards and Understanding of Contradictions in Approaches and Women and Children's Safety in Contexts of Domestic Violence', *British Journal of Social Work* 41(5), p.837.
68. Practice Direction 12J, para. 38(d) states that 'Where a risk assessment has concluded that a parent poses a risk to a child or to the other parent, contact via a supported contact centre, or contact supervised by a parent or relative, is not appropriate.'
69. See, for example Thousands misusing abuse orders to get legal aid, says parenting charity – BBC News.
70. President of the Family Division, Practice Guidance: *Independent Domestic Violence Advisers and Independent Sexual Violence Advisers (Family Courts)* (6 April 2023), para 7: IDVAs and ISVA Guidance.
71. Cusworth, L. et al. (2021). *Uncovering private family law: Adult characteristics and vulnerabilities (Wales)* (NFJO).
72. Women's Aid (2021) Mental Health and Domestic Abuse: *A Review of the Literature (Bristol: Women's Aid)*, available at: Evidence Hub: Mental health and domestic abuse: A review of the literature - Women's Aid
73. *Re P (Section 91(14)) Guidelines (Residence and Religious Heritage)* [1999] EWCA Civ 1323, [1999] 3 WLR 1164.
74. Domestic Abuse Act 2021, s.67.
75. *Re A (A Child) (Supervised Contact) (Section 91(14) Children Act 1989 Orders)* [2021] EWCA Civ 1749. See also F v M [2023] EWFC 5.
76. Hargreaves, C. et al. (2024). *Uncovering private family law: how often do we hear the voice of the child?* - Nuffield Family Justice Observatory.
77. Harm Panel Report (n 1), p.72–74; Harm Panel Literature Review (n 2) p.63.
78. Harm Panel Literature Review p. 95–96. For example, the Cafcass and Women's Aid (2017) file study (n=28) found that 89% of interim orders in cases involving allegations of domestic abuse were made by consent. See also Harm Panel Report (n 1) p.144.
79. Chi-square=4.088, df=1, p=0.043.
80. Chi-square=6.699, df=1, p=0.010.
81. Chi-square=7.809, df=1, p-0.005.
82. See also Harm Panel Report (n 1) p.145.
83. Practice Direction 12J, paras. 6 and 8.

84. Live with: chi-square=4.580, df=5, p=0.469; time with: chi-square=9.767, df=8, p=0.282.
85. Chi-square=17.158, df=8, p=0.029.
86. Chi-square=10.910, df=5, p = 0.053.
87. Chi-square=14.573, df=8, p=0.068.
88. Chi-square=19.608, df=1, p<0.001.
89. Recommendation for unsupervised contact x order for unsupervised overnight contact: chi-square=35.892, df=1, p<0.001; recommendation for supervised or supported contact x order for supervised contact: chi-square=11.770, df=1, p<0.001; recommendation for no contact x order for indirect contact: chi-square=15.824, df=1, p<0.001; recommendation for no contact x order for no contact: chi-square=24.511, df=1, p<0.001.
90. One court had a notably lower rate of previous child arrangements proceedings – 23%.
91. Halliday, E., Green, R. and Marsh, B. (2017) private_law_cases_that_return_to_court_-_cafcass_research_november_2017.pdf
92. MoJ (2025). *Private Law Pathfinder Delivery Update*, p.12.
93. As reported to the Pathfinder Reference Group, 12 June 2025.
94. Barlow, C. et al. (2025). *Private Law Pathfinder Pilot Process Evaluation and Exploratory Financial Analysis* (London: Ministry of Justice Analytical Services): *Private Law Pathfinder Pilot*
95. MoJ (2025). *Private Law Pathfinder Delivery Update*, p.10.
96. Ibid, p.11.
97. See *Surviving Economic Abuse: Transforming responses to economic abuse*.
98. Hitchings, E. and Bryson, C. (2024). *Dividing Property and Finances on Divorce: What Happens in Cases Involving Domestic Abuse?* (University of Bristol and Nuffield Foundation).
99. Resolution (2024). *Domestic Abuse in Financial Remedy Proceedings*, p.5.
100. Tsvetkov v Khayrova [2023] EWFC 130, [2024] 1 FLR 937.
101. N v J [2024] EWFC 184.
102. Matrimonial Causes Act 1971, s.25(2)(g).
103. Law Commission (2024). Financial-Remedies-scoping-report-Dec-24-1-3.pdf.
104. NatCen conducted 10 interviews with key stakeholders focused on understanding and mapping the current availability and accessibility of Family justice system data collected by HMCTS, Cafcass and Cafcass Cymru in their FamilyMan, IRIS and Child First data systems.
105. C1A – Allegations of harm and domestic violence (supplemental information form)
106. Both the Family Court Statistics Quarterly - GOV.UK (publicly available), and the Family Justice Performance Dashboard (available to a limited range of stakeholders) focus on applications, disposals and timelines, with the latter also including some data on caseload, hearings, and expert and s.7 reports.

domestic
abuse
commissioner

The Domestic Abuse Commissioner for England and Wales
2 Marsham Street, London SW1P 4JA

commissioner@domesticabusecommissioner.independent.gov.uk

www.domesticabusecommissioner.uk